NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

CIS Congressional Information Service, Inc
Washington, D.C.

Calendar No. 166

100TH CONGRESS *1st Session* | SENATE | REPORT 100-70

PRICE-ANDERSON ACT AMENDMENTS ACT OF 1987

JUNE 12, 1987.—Ordered to be printed

Filed under authority of the order of the Senate of June 11, 1987

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 748]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 748) to amend the Atomic Energy Act of 1954, as amended, to establish a comprehensive, equitable, reliable, and efficient mechanism for full compensation of the public in the event of an accident resulting from activities undertaken under contract with the Department of Energy involving nuclear materials, having considered the same, reports favorably thereon with amendments to the text and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 4, beginning with line 8, strike "is authorized" and insert "shall".
2. On page 4, line 9, strike "2007, to" and insert "2017,".
3. On page 4, beginning with line 13, strike "substantial".
4. On page 5, line 12, insert "in 1988 dollars" after "$6,000,000,000".
5. On page 7, line 7, insert "in 1988 dollars" after "$6,000,000,000".
6. On page 8, line 5, strike "liability."", and insert "liability." and the following new paragraphs:

"(6) The amounts of indemnity for public liability under this subsection, together with the amount of any financial

S313-15

protection required, shall apply to any and all agreements of indemnification under which the Secretary or his predecessor may be required to indemnify any person, and all such agreements of indemnification shall be deemed to have been so modified as of the effective date of the Price-Anderson Act Amendments Act of 1987.

"(7) Any public liability claims arising in connection with agreements entered into pursuant to section 170 d. (1) and resulting from a nuclear incident involving nuclear material that has been illegally diverted from its intended place of confinement or intended transportation route shall be compensated in accordance with the provisions of this subsection, in the event that:

"(A) the Secretary has title to such nuclear material; or

"(B) title to such material cannot be identified.".

7. On page 8, line 17, insert "in 1988 dollars" after "$6,000,000,000".

8. On page 12, line 20, insert "not" after the word "to".

9. On page 15, after line 25, insert the following new subsection:

(c) Section 11 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following new subsection:

"ee. As used in subsections 170 d. and 170 e., the term '1988 dollars' means in any year an amount that is adjusted to reflect the effects of inflation for the period between such year and the year of the enactment of the Price-Anderson Act Amendments Act of 1987. The rate of inflation shall be measured by the percentage change in the implicit price deflator for the Gross National Product published by the United States Department of Commerce.".

10. On page 16, line 11, strike "August 1, 2003", and insert "August 1, 1997, and every ten years thereafter,".

11. On page 16, strike section 12, and insert a new section 12 as follows:

SEC. 12. Section 170 n. (1) of the Atomic Energy Act of 1954, as amended, is amended by striking all after "thereof" in clause (iii) to the end of the sentence.

12. On page 17, line 14, insert "subsection 170 d." after the word "under".

13. On page 17, lines 6 and 7, strike "r." and insert "q.", line 22, strike "s." and insert "r.", and strike lines 23 through 26, and insert in lieu thereof the following:

"r. The Secretary of Energy shall reimburse a State or local government for costs of precautionary evacuations associated with activities covered by an agreement of indemnification under subsection 170 d. where such evacuations are ordered by a State or local official, provided that such evacuation is deemed reasonable, given due consideration to information available to the State or local officials at

the time of the decision to evacuate, in any one of the following manners:

"(1) prior to the evacuation, by the Secretary of Energy or his designee agreeing with the decision;

"(2) subsequent to the evacuation, by the Secretary of Energy or his designee agreeing with the evacuation decision no later than sixty days after issuance of the evacuation order; or

"(3) if subsequent to the evacuation, and in the event that the Secretary does not agree within sixty days after issuance of the evacuation order, by agreement with the evacuation decision by a panel consisting of three members, one appointed by the Nuclear Regulatory Commission, one appointed by the Director of the Federal Emergency Management Agency, and one appointed by the Governor of the State in which the precautionary evacuation took place. The Panel shall have sixty days to make its decision.".

14. At the end of the bill insert a new section 15 as follows:

CIVIL PENALTIES

SEC. 15. The Atomic Energy Act of 1954, as amended, is further amended by adding a new section 234A as follows:

"SEC. 234. CIVIL MONETARY PENALTIES FOR VIOLATIONS OF DEPARTMENT OF ENERGY REGULATIONS.—a. Any person who has entered into an agreement of indemnification under subsection 170d. (or any subcontractor or supplier thereto) who violates (or whose employee violates) any rule, regulation or order related to nuclear safety prescribed or issued by the Secretary of Energy pursuant to this Act (or expressly incorporated by reference by the Secretary for purposes of nuclear safety) shall be subject to appropriate enforcement action or a civil penalty of not to exceed $100,000 for each such violation. If any violation under this subsection is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

"b. (1) The Secretary shall have the power to compromise, modify or remit, with or without conditions, such civil penalties and to prescribe regulations as he may deem necessary to implement this section.

"(2) In determining the amount of any civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

"c. (1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of

such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

"(2)(A) Unless an election is made within thirty calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

"(B) Any person against whom a penalty is assessed under this paragraph may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

"(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

"(B) If the civil penalty has not been paid within sixty calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

"(C) Any election to have this paragraph apply may not be revoked except with consent of the Secretary.

"(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

"d. The provisions of this section shall not apply to:

"(1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;

"(2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;

"(3) AT&T Technologies, Inc. (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratory;

"(4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;

"(5) Princeton University (and any subcontractors or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;

"(6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and

"(7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.".

15. At the end of the bill insert a new section 16 as follows:

CRIMINAL PENALTIES

SEC. 16. Section 223 of the Atomic Energy Act of 1954, as amended, is further amended by adding a new subsection c. as follows:

"c. Any individual director, officer or employee of a person indemnified under an agreement of indemnification under section 170 d. (or of a subcontractor or supplier thereto) who, by act or omission, knowingly and willfully violates or causes to be violated any section of this Act or any nuclear safety-related rule, regulation or order issued thereunder by the Secretary of Energy (or expressly incorporated by reference by the Secretary for purposes of nuclear safety), which violation results in or, if undetected, would have resulted in a nuclear incident as defined in subsection 11 q. shall, upon conviction, be subject to fine of not more than $25,000, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after the first conviction under this subsection, punishment shall be a fine of not more than $50,000, or imprisonment for not more than five years, or both.".

16. At the end of the bill insert a new section 17 as follows:

OFFICE OF INSPECTOR GENERAL FOR NUCLEAR PROGRAMS

SEC. 17. The Department of Energy Organization Act (Public Law 95-91, as amended) is amended by adding a new section 208A as follows:

"OFFICE OF INSPECTOR GENERAL FOR NUCLEAR PROGRAMS

"SEC. 208A(a)(1) There shall be established within the Department an Office of Inspector General for Nuclear

Programs to be headed by an Inspector General for Nuclear Programs, who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability in management of duties assigned to the Inspector General for Nuclear Programs in this section and without regard to political affiliation. The Inspector General for Nuclear Programs shall report to, and be under the general supervision of, the Secretary or, to the extent such authority is delegated the Deputy Secretary, but shall not be under the control of, or subject to supervision by, any other officer of the Department.

"(2) There shall also be in the Office a Deputy Inspector General for Nuclear Programs who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability in management of duties assigned to the Inspector General for Nuclear Programs in this section and without regard to political affiliation. The Deputy shall assist the Inspector General for Nuclear Programs in the administration of the Office and shall during the absence or temporary incapacity of the Inspector General for Nuclear Programs, or during a vacancy in that Office, act as Inspector General for Nuclear Programs.

"(3) The Inspector General for Nuclear Programs or the Deputy may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

"(4) The Inspector General for Nuclear Programs shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Audits and an Assistant Inspector General for Investigations.

"(5) The Inspector General for Nuclear Programs shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, and the Deputy Inspector General for Nuclear Programs shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code.

"(b) It shall be the duty and responsibility of the Inspector General for Nuclear Programs—

"(1) to supervise, coordinate and provide policy direction for auditing and investigative activities relating to the promotion of health, safety and sound environmental management in the administration of the nuclear programs and operations of the Department;

"(2) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Department for the purpose of promoting health, safety and sound environmental management in the administration of its nuclear programs and operations;

"(3) to recommend policies for, and to conduct, supervise, or coordinate, relationships between the Department and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters related to the promotion of health, safety and sound environmental management in nuclear programs and operations administered or financed by the Department, and (B) the identification and prosecution of violations of nuclear safety-related rules, regulations, or orders prescribed or issued by the Secretary (or expressly incorporated by reference by the Secretary for purposes of nuclear safety); and

"(4) to keep the Secretary and Congress fully and currently informed, by means of the reports required by subsection (c) and otherwise, concerning serious problems or deficiencies relating to health, safety or environmental management in the administration of nuclear programs and operations administered or financed by the Department, to recommend corrective action concerning such problems and deficiencies, and to report on the progress made in implementing such corrective action.

"(c)(1) The Inspector General for Nuclear Programs shall, not later than May 31 and November 30 of each year, submit to the Secretary and the Congress semiannual reports summarizing the activities of the Office during the imediately preceding six-month periods ending March 31, and September 30. Such reports shall include, but need not be limited to—

"(A) a description of significant problems and deficiencies relating to the administration of programs and operations of the Department disclosed by such activities during the reporting period;

"(B) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems or deficiencies identified pursuant to subparagraph (A);

"(C) an identification of each significant recommendation described in previous reports under this subsection on which corrective action has not been completed;

"(D) a summary of violations of nuclear safety-related rules, regulations or orders prescribed or issued by the Secretary (or expressly incorporated by reference by the Secretary for purposes of nuclear safety) identified and brought to the attention of proper authorities and the disposition of these matters at the time of the report; and

"(E) information concerning the numbers and types of audit reports completed by the Office during the reporting period.

"(2) Within sixty days of the transmission of each semiannual report to the Congress, the Secretary shall make

copies of such report available to the public upon request and at a reasonable cost.

"(d) The Inspector General for Nuclear Programs shall report immediately to the Secretary and to the appropriate committees and subcommittees of Congress whenever the Office becomes aware of particularly serious or flagrant problems or deficiencies relating to health, safety and sound environmental management in the administration of nuclear programs and operations of the Department. The Deputy and Assistant Inspectors General for Nuclear Programs shall have particular responsibility for informing the Inspector General for Nuclear Programs of such problems or deficiencies.

"(e) The Inspector General for Nuclear Programs—

"(1) may make such additional investigations and reports relating to the administration of the nuclear programs and operation of the Department as are, in the judgment of the Inspector General for Nuclear Programs, necessary or desirable;

"(2) shall respond in a timely fashion to any request from either House of Congress or from a committee thereof for an investigation relating to health, safety or environmental problems with the administration of nuclear programs or operations of the Department by carrying out the investigation requested and submitting a report to the Secretary and to Congress thereon or by stating in writing the reasons why the Inspector General for Nuclear Programs does not believe the investigation requested is justified; and

"(3) shall provide such additional information or documents as may be requested by either House of Congress or, with respect to matters within the jurisdiction, by a committee or subcommittee thereof.

"(f) Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted to the Secretary and to Congress, or committees or subcommittees thereof, by the Inspector General for Nuclear Programs without further clearance or approval. The Inspector General for Nuclear Programs shall insofar as feasible, provide copies of the reports required under subsection (c) to the Secretary sufficiently in advance of the due date for submission to Congress to provide a reasonable opportunity for comments of the Secretary to be appended to the reports when submitted to Congress.

"(g) In addition to the authority otherwise provided by this section, the Inspector General for Nuclear Programs, in carrying out the provisions of this section, is authorized—

"(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, and other material available to the Department which relate to programs and operations with respect to which the In-

spector General for Nuclear Programs has responsibilities under this section;

"(2) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this section, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court; and

"(3) to have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions under this section.

"(h) In carrying out the responsibilities specified in subsection (b)(1), the Inspector General for Nuclear Programs may obtain services, including services of experts and consultants, as authorized by section 3109 of title 5, United States Code, at rates not to exeed the daily rate prescribed for grade GS–18 of the General Schedule under section 5332 of title 5, United States Code, for persons of Government service employed intermittently.

"(i) In carrying out his duties and responsibilities under this section, the Inspector General for Nuclear Programs shall—

"(1) give particular regard to the activities of the Inspector General under section 208 with a view toward avoiding duplication and insuring effective coordination and cooperation; and

"(2) report expeditiously to the Attorney General whenever the Inspector General for Nuclear Programs has reasonable grounds to believe there has been a violation of Federal criminal law.

"(j)(1) The Office of the Inspector General for Nuclear Programs may receive and investigate complaints or information from an employee of the Department (or an employee of any person under contract with the Department) concerning the possible existence of an activity constituting a violation of nuclear safety-related rules, regulations or orders prescribed or issued by the Secretary (or expressly incorporated by reference by the Secretary for purposes of nuclear safety).

"(2) The Inspector General for Nuclear Programs shall not, after receipt of a complaint or information from such an employee, disclose the identity of the employee, unless the Inspector General for Nuclear Programs determines such disclosure is unavoidable during the course of the investigation.

"(3) Any employee of the Department (or an employee of any person under contract with the Department) who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threatent to take any action against any employee as a reprisal for making a complaint of disclosing information to the Office of the Inspector General for

Nuclear Programs, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth of falsity.

"(k) Any request for appropriations for the Department submitted to Congress shall identify in a detailed budget justification the portion of such request intended for support of the Office of the Inspector General for Nuclear Programs, and shall include the comments of the Inspector General for Nuclear Programs on the differences, if any, between the amounts requested and the assessment of the Inspector General for Nuclear Programs of the budgetary needs of the Office.".

17. At the end of the bill insert a new section 18 as follows:

REVIEW OF DEPARTMENT OF ENERGY NUCLEAR ACTIVITIES

SEC. 18. (a)(1) The President shall, as soon as practicable but not later than one hundred and twenty days after the date of enactment of this Act, appoint a panel of five independent, highly-qualified individuals to make recommendations to Congress for regulation and oversight of Department of Energy nuclear activities.

(2) The recommendations shall include alternative and/or additional regulatory regimes applicable to the Department of Energy's nuclear programs that would provide for—

(A) reasonable assurance of the public health and safety,

(B) public confidence in the Department of Energy's management,

(C) increased accountability for management and operations,

(D) efficient and effective oversight, and

(E) timely discovery and reporting of potential problems.

(3) Based on the panel's evaluation carried out according to subsection (b), the panel shall report by January 20, 1989, to the President and Congress with specific recommendations for legislation, regulations, policies, and procedures that would achieve the goals set out in paragraph (2).

(b) The panel established by subsection (a) shall—

(1) review regulations of health, safety, and environmental aspects of the Department of Energy nuclear facilities and operations, including laboratories, production facilities, waste management facilities, and transportation programs;

(2) evaluate existing regulatory regimes (including, but not limited to, those of the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Transportation, and Occupational Safety and Health Administration) for potential application to the Department of Energy nuclear programs. Such evaluation shall assess the relevance of these regimes

to the Department of Energy's nuclear programs, including the feasibility of their application to the Department's nuclear programs, the potential impact of their application on achievement of the goals of these programs, and the impact on programs affecting national security.

(c)(1) The Secretary shall designate one member of the panel who shall serve as chairman and who shall set the dates of hearings, meetings, and other official panel functions in carrying out the purposes of this section. The panel, in developing its recommendations, is authorized to hold hearings as it deems advisable.

(2) The panel members shall be selected based on their expertise in areas including but not limited to health and safety, Department of Energy contractor operations, physical sciences, environmental regulation, waste management, national security, and weapons technology.

(3) Members of the panel shall receive no pay on account of their service on the panel, but while away from their homes or regular places of business in the performance of services for the panel, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(4) DIRECTOR AND STAFF.—(A) The panel shall have a director who shall be appointed by the panel and who shall be paid at a rate not to exceed the minimum rate of basic pay payable for level GS–16 of the General Schedule.

(B) The panel may appoint such additional staff personnel as the panel considers appropriate and may pay such staff at rates not to exceed the minimum rate of basic pay payable for level GS–15 of the General Schedule.

(C) Except as otherwise provided in this paragraph, such director and staff—

(i) shall be appointed subject to the provisions of title V, United States Code, governing appointments in the competitive service; and

(ii) shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(5) Subject to such rules as may be adopted by the panel, the panel may procure temporary and intermittent services from experts and consultants to the same extent as is authorized by section 3109(b) of title 5, United States Code, but at rates determined by the panel to be reasonable.

(6) Upon request of the panel, the head of any Federal agency may detail, on reimbursable basis, any of the personnel of such agency to the panel to assist the panel in carrying out the panel's duties.

(7) The panel is authorized to secure from any department, agency or individual instrumentality of the Executive Branch of Government any information it deems nec-

essary to carry out its functions under this Act and each such department, agency, and instrumentality is authorized and directed to furnish such information to the panel upon request made by the chairman.

(8) The chairman of the panel shall request the head of each Federal department or independent agency which has an interest in or responsibility with respect to the matters under evaluation by the panel to appoint a liaison officer who shall work closely with the panel and its staff. These departments or agencies shall include, but not be limited to, the Nuclear Regulatory Commission, the Environmental Protection Agency, the Department of Transportation, the Department of State, the Occupational Safety and Health Administration, and the Department of Energy.

(9) The panel shall terminate within sixty days after submission of the report set forth in subsection (a).

(d) There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

18. Amend the title so as to read: "A bill to amend the Atomic Energy Act of 1954, as amended, to establish a comprehensive, equitable, reliable, and efficient mechanism for full compensation of the public in the event of an accident resulting from activities undertaken under contract with the Department of Energy involving nuclear materials, and for other purposes.".

Purpose of the Measure

The purpose of the bill, as reported by the Committee, is to modify and extend the portions of the Price-Anderson Act (section 170 of the Atomic Energy Act, 42 U.S.C. 2210) that provide for public liability coverage for contractors of the Department of Energy. The bill would—

extend authority for the Price-Anderson indemnification system for DOE contrators for 30 years;

authorize an increase in the aggregate level of indemnification payments available to compensate victims of a nuclear incident from $500 million in current dollars to $6 billion in constant dollars per incident;

establish an expedited mechanism for congressional action on additional compensation measures if needed; and

broaden the scope of the public compensation system to include nuclear waste disposal activities and nuclear incidents involving theft of nuclear materials.

The bill would also establish—

authority to impose civil and criminal penalties on contractors for violations of DOE rules, regulations, and orders relating to nuclear safety;

an Inspector General for Nuclear Programs at DOE; and

an independent panel to make recommendations to Congress for permanent regulation and oversight of DOE nuclear activities.

Summary of Major Provisions

Section 3 of the bill as reported expands and extends the authority of the Secretary of Energy to indemnify Department of Energy contractors. The level of indemnification authorized is increased from the current level of $500 million to $6 billion adjusted for inflation. DOE is directed to indemnify its contractors through August 1, 2017, for activities under risk of public liability resulting from nuclear incidents.

Section 3 also extends coverage for DOE contractors under the Act to include any nuclear incident caused by exposure to nuclear material that has been illegally diverted from its intended place of confinement or intended transportation route. It also expressly makes the coverage applicable to activities involving storage or disposal of nuclear waste from civilian power reactors.

Section 4 increases the aggregate liability for a single nuclear incident for DOE contractors to $6 billion adjusted for inflation so as to match the level of indemnification authorized under section 3. In the event that claims exceed that amount, Congress would be required to consider the appropriate measures to be taken in order to provide additional funds for full compensation.

Section 5 establishes a new system under which the Congress would review a nuclear incident resulting from DOE contractor activities in the event it appears that additional compensation funds above the aggregate liability limit would be required.

Section 15 provides authority for the Secretary of Energy to assess civil penalties of up to $100,000 per day against DOE contractors, subcontractors, or suppliers indemnified under the Price-Anderson Act for any violation of a DOE rule, regulation, or order related to nuclear safety.

Section 16 provides authority to impose criminal penalties against any individual director, officer, or employee of a contractor, subcontractor, or supplier indemnified under the Price-Anderson Act who knowingly and willfully violates any DOE rule, regulations, or order related to nuclear safety.

Section 17 would establish a new Office of Inspector General for Nuclear Programs within DOE to identify, investigate, report on, and make recommendations with respect to, problems with health, safety, and environmental management of DOE nuclear facilities and operations.

Section 18 would require the President to appoint a five-member independent panel to make recommendations to Congress by January 20, 1989, for improvements in regulation and oversight of DOE nuclear activities.

Background and Need

The Price-Anderson Act was originally enacted in 1957 with two major objectives:

to assure adequate public compensation in the case of a nuclear accident; and

to set a limit on the liability of private industry to remove a major deterrant to private participation in the development of nuclear energy.

The amount of private insurance then available was considered insufficient ($60 million in 1957) to cover potential damages from a catastrophic accident. Federal indemnity was therefore considered appropriate to supplement that insurance to assure adequate compensation to the public in the event of a major nuclear accident.

The need for extending the Price-Anderson Act today is essentially the same as in 1957. As in 1957, the amount of private insurance available is insufficient to cover the potential damage and personal injury claims resulting from a catastrophic nuclear accident. Compensation to victims of a nuclear accident, in the absence of the Price-Anderson Act, therefore, would likely be seriously limited.

The Price-Anderson system is a comprehensive, compensation-oriented system of liability insurance for Department of Energy contractors and Nuclear Regulatory Commission licensees operating nuclear facilities. Under the Price-Anderson system, there is a ready source of funds available to compensate the public after an accident, and the channeling of liability to a single entity and waiver of defenses insures that protracted litigation will be avoided. That is, the Price-Anderson Act provides a type of "no fault" insurance, by which all liability after an accident is assumed to rest with the facility operator, even though other parties (such as subcontractors or suppliers) might be liable under conventional tort principles. This "omnibus" feature permits a more unified and efficient approach to processing and settlement of claims, thus allowing quick compensation to the public from the pool of funds set up by the Price-Anderson system. If damages exceed the limit established by law, the Price-Anderson Act would require Congress to review the situation and determine what action should be taken to make additional funds available to compensate the public.

EVOLUTION OF THE PRICE-ANDERSON ACT

Since first enacted in 1957, the Price-Anderson compensation system has evolved from a system of primarily Federal indemnification for all nuclear activities to the current combination of Federal indemnity for DOE contractors and a compensation pool/self-insurance type of arrangement for NRC licensees operating nuclear powerplants. The Act has been renewed twice since 1957 (in 1966 and 1975), in each case for 10-year periods. The 10-year renewals provided Congress with the opportunity to review the experience of the relatively young nuclear industry with the Price-Anderson system and to make adjustments to the Price-Anderson Act accordingly.

As enacted in 1957, the Act provided to commercial powerplant licensees a $560 million limit on liability, consisting of the maximum amount of private insurance then available ($60 million) and $500 million of Federal indemnity. For contractor operated activities of the Atomic Energy Commission (now contractor activities of the Department of Energy), the Federal Government indemnified each contractor up to a limit of $500 million. In the event that an accident caused damages in excess of these limits, the law provided that Congress "will thoroughly review the particular incident and will take whatever action is deemed necessary and appropriate to

protect the public from the consequences of a disaster of such magnitude."

The 1966 renewal of the Price-Anderson Act added a new concept to the statutory scheme that provided for a waiver of traditional tort law defenses in the event of a major accident determined to be an extraordinary nuclear occurrence (ENO). In the event of an ENO, which is defined in the Atomic Energy Act as an occurrence "That has resulted or probably will result in substantial damages to persons offsite or property offsite," the licensee or contractor would be required to waive traditional defenses of State tort law (including contributory negligence, assumption of the risk, or the Government's claim to sovereign immunity) to facilitate recovery by plantiffs.

The 1966 renewal also set a minimum statute of limitations of 10 years for the filing of claims after an accident. The 10-year limit superseded more restrictive State statutes of limitations, but did not affect less restrictive State laws.

Another amendment adopted in 1966 enhanced the insurance pool's ability to make emergency assistance payments following a commercial nuclear powerplant incident. This amendment provided that indemnitors could make payments of immediate assistance from available funds, and that such payments could be made without securing releases and would not constitute an admission of liability of any person indemnified. It was this provision that allowed for immediate payments totalling $1.3 million for emergency assistance, which included the reimbursement of living expenses and lost wages, to those residents who were temporarily relocated after the 1979 accident at Three Mile Island.

The 1975 renewal added a provision to phase out Federal indemnity for Nuclear Regulatory Commission licensees and to replace this with a self-insurance pool-type arrangement consisting of after-the-fact assessments (called retrospective premiums). In the event that damages from an accident were likely to exceed the coverage available from private insurance, each NRC reactor licensee would be assessed up to $5 million to pay a pro-rated share of the damages in excess of private insurance available. This change in the Price-Anderson scheme allowed a phase-out of Federal indemnity and allowed for an increase in the aggregate limit on liability as each new reactor was licensed. Based on this system, the aggregate limit on liability for a commercial nuclear powerplant accident today is $710 million, which would consist of $160 million in private insurance and $5 million contributed by each of 110 reactor licensees following a nuclear incident.

Other amendments added in 1975 extended the statute of limitations from 10 to 20 years and established a mechanism to prioritize claims as necessary to allow the most equitable allocation of available funds.

The 1975 renewal did not increase the aggregate liability limit for DOE contractor accidents, leaving the available Federal indemnity for DOE contractors at the level of $500 million.

CLAIMS EXPERIENCE TO DATE

The March 1979 accident at Three Mile Island (TMI) is the only commercial reactor accident to date that has resulted in payments to the public. Insured loses and related expenses resulting from the TMI accident have totalled about $50 million, all of which has been covered by private insurance. Approximately $41.9 million of that total has been paid out for claims and the remainder for legal fees. Over 2,000 additional personal injury claims from the TMI accident are still pending in Federal and State courts. The only other claims in the commercial sector have involved claims by workers against contractors for alleged injury from radiation exposure during the course of work. The total amount paid to date for these claims is approximately $7.1 million, of which $2.5 million has gone toward claims and $4.6 million has been for administrative and legal costs associated with investigating and settling claims.

The Federal Government has paid out $1.5 million to date for claims resulting from activities under contract with DOE or the Atomic Energy Commission.

NEED FOR THE LEGISLATION

Existing indemnification authority of the Department of Energy and the Nuclear Regulatory Commission expires on August 1, 1987.

Expiration of this indemnification authority would have major ramifications on the public's ability to receive compensation for damages resulting from a nuclear accident. However, the impact of expiration would be the most serious with respect to indemnity for Department of Energy activities, as the following discussion illustrates.

S. 748 addresses only the portions of the Price-Anderson Act that relate to indemnity for DOE contractor activities. The need to extend these portions of the Act prior to the August 1, 1987, expiration date is the most immediate. NRC has taken the position that the current Price-Anderson compensation system (up to the current aggregate limit of $710 million) would continue to apply to any NRC licensee, even in the event of expiration of the Act, if the licensee received a construction permit by August 1, 1987. All existing commercial reactors and those in the construction pipeline would, therefore, continue to be covered under the Price-Anderson Act, making the need for extension of those portions of the Act related to NRC licensees less immediate.

Failure to extend the Price-Anderson system for DOE contractor activities, however, would raise serious concerns about adequate compensation for victims of a nuclear accident at a DOE facility. DOE contractors are covered under the Price-Anderson indemnification provisions of current contracts. If the Act were to expire, however, DOE would lose its authority to indemnify contractors under Price-Anderson in new contracts. Any existing indemnity agreements would expire at the end of the term of the existing contracts and could not be renewed. The average length of DOE contracts is 3 years, and none are longer than 5 years. Several of the Department's major contracts will come up for renewal soon after the August 1, 1987, expiration date. Contracts at four major facilities (Los Alamos National Laboratory, Lawrence Livermore Nation-

al Laboratory, Lawrence Berkeley National Laboratory, and the Hanford Engineering Development Laboratory) will expire on September 30, 1987. The contract for operation of another major facility, Brookhaven National Laboratory, will expire on December 31, 1987.

In the absence of the Price-Anderson Act, it is possible that DOE could use authority under Public Law 85-804 (50 U.S.C. 1431) to indemnify its contractors. Public Law 85-804 is intended to protect the contractors from liability; however, it does not provide the same public protection features of the Price-Anderson Act. Under the provisions of Public Law 85-804, victims could sue for damages under State tort law, but contractors would not have to waive their defenses. Victims would also not be able to benefit from the other important features of the Price-Anderson Act, such as emergency assistance payments, consolidation and prioritization of claims, or a minimum statute of limitations. While there would technically be no limit on liability under Public Law 85-804, this would not likely offer a limitless source of funds. Compensation to the public would be available only through the congressional appropriations process. In addition, the "omnibus" feature of Price-Anderson for channeling of liability to the facility operator would not be available through the indemnity provisions of Public Law 85-804. Therefore, a separate indemnity agreement would be required for each of the approximately 65,000 subcontractors and suppliers that are now encompassed by the Price-Anderson system.

Numerous lawsuits would likely be filed under Public Law 85-804, leading to protracted litigation, increased legal expenses required to settle cases and delayed or inadequate compensation of victims.

There is the possibility that some DOE contractors would discontinue work in DOE's nuclear activities altogether if the Price-Anderson system is not extended. In that event, Federal nuclear activities would continue, but they would likely be carried out by Federal employees or by possibly less responsible, less competent contractors. If DOE's nuclear activities were to be carried out by Federal employees, victims of a nuclear accident could only attempt to obtain compensation by filing suit against the Federal Government under the Federal Tort Claims Act.

Under the Federal Tort Claims Act (FTCA, 28 U.S.C. 2674) as with Public Law 85-804, technically there would be no limit on liability. The FTCA, however, imposes a number of significant legal obstacles to recovery of damages from the Federal Government. These obstacles include the following:

—the FTCA excludes any claim based upon the performance or the failure to perform a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion involved has been abused.

—The Government is protected from claims that are based on the exercise of a governmental function.

—Under the FTCA, strict liability cannot be imposed on the Federal Government.

—Jury trials are not permitted under the FTCA.

—the FTCA contains a requirement that would make it extremely difficult to bring a class action on behalf of victims, because

each injured person would first be required to file an administrative claim with the Federal agency implementing the program.

In general, failure to extend the Price-Anderson Act would result in substantially less protection for the public in the event of a nuclear incident. In the absence of the Act, compensation for victims of a nuclear incident would be less predictable, less timely, and potentially inadequate compared to the compensation that would be available under the current Price-Anderson system.

Legislative History

S. 748 was introduced on March 17, 1987, by Senators Johnston, McClure, and Domenici, and was referred to the Committee on Energy and Natural Resources.

The full Committee held a hearing on March 18, 1987. Testimony was received from witnesses representing the Department of Energy, the Nuclear Regulatory Commission, Edison Electric Institute, American Nuclear Energy Council, the Environmental Policy Institute, and the U.S. Public Interest Research Group.

The Committee met in open business session to consider S. 748 on April 8, April 22, and May 20, 1987.

Similar legislation (S. 1225) was reported by the Committee on Energy and Natural Resources and the Committee on Environment and Public Works in the 99th Congress. A compromise substitute developed by staff of the two committees was introduced in the Senate on October 6, 1986, as an amendment to S. 1225.

Committee Recommendation and Tablulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on May 20, 1987, by majority vote of a quorum present recommended that the Senate pass S. 748, if amended as described herein.

The rollcall vote on reporting the measure was 17 yeas, 2 nays as follows:

YEAS	NAYS
Mr. Johnston	Mr. Metzenbaum
Mr. Bumpers	Mr. Bradley*
Mr. Ford	
Mr. Melcher	
Mr. Bingaman*	
Mr. Wirth*	
Mr. Fowler	
Mr. Conrad	
Mr. McClure	
Mr. Hatfield*	
Mr. Weicker*	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski*	
Mr. Nickles*	
Mr. Hecht*	
Mr. Evans*	

*Indicates vote by proxy.

Committee Amendments

Amendment 1. This amendment requires the Department of Energy to indemnify all contractors involved in nuclear activities. Under S. 738 as introduced, the authority of the Secretary of Energy to indemnify contractors is discretionary.

The amendment changes subparagraph 170 d. (1)(A) of the Atomic Energy Act, which grants the Secretary of Energy the discretionary authority to indemnify DOE contractors engaged in nuclear activities, based on the Secretary's determination that there is a substantial risk involved. The amendment makes indemnification mandatory. The Committee felt that the protection afforded the public by the Price-Anderson Act is important enough to justify removing the Secretary's discretion and, instead, to require that DOE contractors be indemnified under the Price-Anderson Act for all nuclear activities. This will guarantee to the public that the Price-Anderson system will be available to provide compensation in the event of a nuclear incident.

This amendment would require the Secretary to enter into agreements of indemnification in all contracts involving activities under the risk of public liability for a substantial nuclear incident. Amendment 3, discussed below, strikes the word "substantial" from this requirement.

Amendment 2. This amendment extends the Secretary of Energy's authority to enter into agreements of indemnification with its contractors under subsection 170 d. of the Atomic Energy Act for 30 years, through August 1, 2017. S. 748 as introduced would extend this authority for 20 years.

The Committee adopted the longer, 30-year extension in connection with the inflation indexing provisions (see Amendments 4, 5, and 7, discussed below) and the requirement for a Departmental review of the status of the Price-Anderson system every 10 years (see Amendment 10, discussed below). The inflation adjustment to the liability limit insures that the economic value of this protection will not erode with time, and the periodic reports insure that Congress will have timely notice of any problems that arise with the system. The Committee, therefore, felt that a longer extension of the basic provisions of the Act is justified.

Amendment 3. This amendment is a conforming amendment to Amendment 1, which makes mandatory the authority of the Secretary of Energy to indemnify contractors engaged in nuclear activities. Amendment 3 deletes the qualifier "substantial" from the phrase "substantial nuclear incident", and thereby requires the Secretary to indemnify all contractors involved in activities under the risk of public liability for a nuclear incident, whether the Secretary determines the risk to be "substantial" or not.

Amendments 4, 5, and 7. These amendments would adjust the authorized level of indemnification and the aggregate limit on liability under the provisions of the Price-Anderson Act covering Department of Energy contractors to account for inflation. As amended, the bill would establish these limits for DOE contracts at $6 bil-

lion in constant dollars. As introduced, S. 748 set these limits at $6 billion in current dollars.

The amendments add the phrase "in 1988 dollars" to subsections 170 d. and e. The effect of these amendments is that in the event of a nuclear incident, the authorized level of indemnification and the aggregate limit on liability would reflect the effects of inflation for the period between the year of that incident and the year of enactment of this legislation. The rate of inflation would be measured by the percentage change in the implicit price deflator for the Gross National Product published by the United States Department of Commerce. This amendment assures that the authorized level of indemnification and the limitation on aggregate liability established by the bill as reported will not be eroded in the future by the effects of inflation.

Amendment 9, discussed below, adds a new definition to the Atomic Energy Act of 1954 defining the term "1988 dollars" by specifying the method of calculating the inflation adjustment.

Amendment 6. This amendment adds new paragraphs 170 d.(6) and 170.(7). Paragraph 170 d.(6) would provide for a retroactive increase in contractor indemnity to make the indemnification provisions of existing and former Department of Energy contracts coextensive with the new aggregate limit on liability under this legislation. The purpose of this amendment is to prevent a situation in which existing and former contractors indemnified for no more than $500 million under current law (under contracts signed prior to enactment of this legislation) could be subject to liability in excess of the level of indemnification authorized under the bill as reported. Upon enactment of this legislation, the amendment would automatically adjust all such indemnity agreements signed prior to enactment. The automatic adjustment would avoid the administrative burden of amending all past and present DOE indemnity agreements individually.

Paragraph 170.d(7) would extend coverage of the Price-Anderson Act to indemnify DOE contractor activities and to compensate valid claims resulting from a nuclear incident involving nuclear material that has been illegally diverted from its intended place of confinement or intended transportation route. Indemnification under 170 d. would be triggered if the Secretary of Energy has title to the diverted material or if title to such material cannot be identified. The purpose of this amendment is to clarify an ambiguity in current law which provides for indemnification for contractual activity, but does not clearly cover incidents in which theft or other illegal intervention by third parties occurs.

This provision specifies the source of indemnification payments for damage claims approved under the usual State law tort procedures applicable to claims to be compensated under the Price-Anderson Act. The provision does not create legal liability in circumstances where nuclear material has been illegally diverted from its intended place of confinement or its intended transportation route. If liability and damages are established in a State court, then funds for claims against persons indemnified under the Price-Anderson Act will be available to the same extent these funds would be available to indemnify valid claims arising from a contractual activity if

the conditions of the amendment with respect to the title of the diverted material are met.

No related provisions were included in S. 748 as introduced.

Amendment 8. This amendment is technical in nature necessary to correct a printing error.

Amendment 9. This amendment adds the definition of the term "1988 dollars" to the Atomic Energy Act of 1954. The definition specifies the method to be used to calculate the inflation adjustment factor that is to be applied to the authorized level of indemnification and the aggregate limitation on liability under amendments 4, 5, and 7. These amounts would be determined as follows:

Assume a nuclear incident generating damage claims occurs in 1990. If the implicit price deflator published by the United States Department of Commerce for 1990 is 129.8 (1982=100) and the implicit price deflator for the year of enactment of the Price-Anderson Act Amendments Act of 1987 is 117.2 (1982=100), the inflation adjustment factor would be 129.8/117.2=1.108. The authorized level of indemnification and the aggregate limitation on liability for this 1990 incident would be $6,000,000,000 × 1.108=$6,645,000,000.

S. 748 as introduced did not provide for adjustment of these amounts to reflect the effects of inflation.

Amendment 10. This amendment requires the Secretary of Energy to submit a report to Congress by August 1, 1997, and every 10 years thereafter. These reports would assess the need for continuation or modification of the provisions of the Price-Anderson Act, taking into account factors specified in current law. These factors include the condition of the nuclear industry, the availability of private insurance, and the state of knowledge of nuclear safety. The reports would also be required under current law to include recommendations, if any, as to the repeal or modification of the Price-Anderson Act.

S. 748 as introduced required a single report on these matters on or before August 1, 2003.

Amendment 11. This amendment eliminates the 20-year statute of limitations that the Secretary of Energy and the Nuclear Regulatory Commission are authorized to incorporate into indemnity agreements in the case of an extraordinary nuclear occurrence (ENO). Upon enactment of this amendment a damage suit could be filed at any time after an ENO, provided the suit is instituted within 3 years from the time that the claimant first knew, or reasonably could have known, of his injury or damages caused by the ENO.

This new standard would supercede any more restrictive State tort law standards in existing law with respect to statutes of limitations.

S. 748 as introduced extended the statute of limitations for an ENO from 20 to 30 years.

Amendment 12. This amendment is technical in nature.

Amendment 13. This amendment requires the Secretary of Energy to reimburse a State or local government for costs of a precautionary evacuation associated with activities covered by an agreement of indemnification with the Department of Energy under the Price-Anderson Act. Reimbursement would occur if the

evacuation is ordered by a State or local official and is deemed reasonable by the Secretary of Energy either prior to or subsequent to the evacuation order. In the event that the Secretary does not concur in the order, a panel consisting of one member each from the Nuclear Regulatory Commission, the Federal Emergency Management Administration and the State in which the evacuation was ordered would determine whether the order was reasonable or not.

Subsection 14(b) of S. 748 as introduced adds a new definition to the Atomic Energy Act defining a "precautionary evacuation".

Section 14(a) of S. 748 as introduced linked compensation for costs of precautionary evacuations to "legal liability arising out of or resulting from a precautionary evacuation". The committee replaced this provision with the language of this amendment to insure compensation for the costs of precautionary evacuations that are ordered by responsible authorities based on good and sufficient reasons without the need for an intervening judicial determination of "legal liability".

Amendment 14. This amendment establishes a new section in Chapter 18 of the Atomic Energy Act, granting the Secretary of Energy authority to assess civil penalties on Department of Energy contractors, subcontractors or suppliers indemnified under the Price-Anderson Act who violate DOE rules, regulations or orders related to nuclear safety. Violations subject to the assessment of civil penalties under this amendment include violations of any rule, regulation, or order incorporated by reference by the Secretary for purpose of nuclear safety even if such rule, regulation or order was established by another entity, such as the United States Department of Transportation or a State or local government.

The civil penalties authority of this amendment generally follows the existing authority contained in Chapter 18, section 234 of the Atomic Energy Act for assessment of civil penalties by the Nuclear Regulatory Commission on Commission licensees.

The Committee included this authority in legislation extending the Price-Anderson Act to provide for greater accountability of contractors, subcontractors and suppliers in the performance of their duties under contract with the Department of Energy for nuclear activities indemnified under the Price-Anderson Act. The Committee believes that the availability and careful exercise of this authority by the Department can reduce the likelihood of serious nuclear incidents in connection with DOE facilities and activities by providing greater reason for care in existing operations and strong incentives to identify capital improvements in existing facilities and modifications in practices that can improve health, safety and environmental management.

No such authority was contained in S. 748 as introduced. Current law does not provide the Secretary with clear authority to assess civil penalties for violations by contractors, subcontractors or suppliers of the full range of DOE rules, regulations or orders, or of rules, regulations or orders of other agencies or instrumentalities that the Secretary has incorporated by reference in DOE rules. The amendment fills this gap in the Secretary's authority.

The Committee expects the Secretary of Energy to publish and make available to DOE contractors, subcontractors and suppliers

the rules, regulations and orders (including identification of those rules, regulations and orders incorporated by reference) applicable to the activities in which those contractors, subcontractors and suppliers are engaged, the violation of which may subject these persons to the penalties authorized by this amendment and by amendment 15, discussed below. The Committee also expects that the Secretary will establish an adequate program and the necessary regulations to monitor and enforce the Department's nuclear safety rules, regulations and orders.

The amount of the civil penalty can be up to $100,000 per day per violation. In determining the amount of the penalty, the Secretary is authorized to take into account certain factors and may substitute an alternative enforcement action for a penalty where appropriate. The Committee expects the Secretary's response to any violation will be commensurate with the seriousness of the violation and past performance of the violator. The Committee does not believe that improved safety will result if the exercise of this authority or the threat of its unreasonable exercise results in the withdrawal of responsible contractors, subcontractors or suppliers from DOE nuclear activities.

Any person subject to such penalty under this amendment may elect administrative assessment of the penalty by the Secretary after opportunity for an agency hearing before an administrative law judge, or a trial de novo in the appropriate district court of the United States.

The Committee limited exercise of the civil penalty authority under this amendment by explicitly exempting from application of this amendment seven specific entities currently carrying out activities in connection with nine specific existing DOE facilities. As long as the contracts with these entities are in effect (or are renewed) at these facilities, activities under these contracts are not subject to the civil penalties authorized in this amendment.

Amendment 15. This amendment provides independent authority to impose criminal penalties for knowing and willful violations of the Department's nuclear safety rules, regulations or orders by any individual director, officer or employee of a contractor, subcontractor or supplier idemnified under the Price-Anderson Act where such violation resulted in, or could have resulted in, a nuclear incident. Violations subject to this authority include violations of rules, regulations or orders expressly incorporated by the Secretary of Energy for purposes of nuclear safety.

This criminal penalty authority follows authority contained in Chapter 18, section 223 of the Atomic Energy Act providing for criminal sanctions for knowing and willful violations of the rules and regulations of the Nuclear Regulatory Commission by Commission licensees.

S. 748 as introduced did not provide for criminal penalties. The Atomic Energy Act of 1954 does not specifically authorize criminal penalties for violations of rules, regulations or orders of the Department of Energy (or those of other agencies or instrumentalities incorporated by the Secretary by reference) related to nuclear safety. The Committee believes that the criminal penalties provided by this amendment are needed to provide strong sanction

against activities on the part of individuals that might result in a nuclear incident.

Amendment 16. This amendment establishes an Office of Inspector General for Nuclear Programs in the Department of Energy. No similar provision was included in S. 748 as introduced.

The organization and powers of this Office parallel the organization and powers of the Office of Inspector General established by section 208 of the Department of Energy Organization Act. The principal difference between the two Offices is in their missions. The Inspector General focuses his efforts on problems relating to fraud and inefficiency in all DOE programs. The Inspector General for Nuclear Programs would focus his efforts on health, safety and environmental management in DOE nuclear programs. The Committee intends that the activities of these two Inspector Generals be coordinated so as to avoid duplication of effort and overlapping demands on contractors to the Department.

The Committee expects that the Inspector General for Nuclear Programs will monitor the relationship between DOE and its contractors and make any recommendations for investigations, prosecutions, changes in policies or management, improvements in facilities, increased oversight by the Department and other corrective actions that are found justified. The Inspector General for Nuclear Programs is authorized to make use of panels of experts in analyzing the operations of DOE facilities. Similar panels have in the recent past provided useful independent criticism of DOE facilities and management practices.

The Inspector General for Nuclear Programs is subject to an additional requirement to respond in a timely fashion to any request for an investigation from Congress or a Committee thereof by conducting the investigation requested or by stating in writing why the investigation is not justified. The Committee intends that the Inspector General for Nuclear Programs be aggressive in initiating on his own motion reviews of the activities of DOE and its contractors to prevent the occurrence of nuclear incidents. This requirement of responsiveness to Congressional concern is intended to insure that the Inspector General for Nuclear Programs will also be aggressive in addressing situations that have come to public attention by other means.

The amendment also provides limited protection for employees of the Department or of any firm under contract to the Department who provide information to the Inspector General for Nuclear Programs relating to nuclear safety violations. This provision will insure the timely disclosure of important information that the Inspector General for Nuclear Programs might not otherwise acquire and employees might not otherwise be willing to reveal.

Finally, the Committee intends that the Office of Inspector General for Nuclear Programs have adequate resources to carry out the strong oversight role set forth in this amendment. To insure the availability of reliable information about the budget resources needed, the amendment requires that any request for appropriations for the Department must include a detailed budget justification for the request intended for support of the Office of the Inspector General for Nuclear Programs together with the comments of

the Inspector General for Nuclear Programs on any differences between this request and the needs of the Office.

Amendment 17. This amendment requires the President to appoint an independent panel to make recommendations to Congress by January 20, 1989, concerning improvements in regulation and oversight of Department of Energy nuclear activities. No such provision was included in S. 748 as introduced.

The Committee believes the comprehensive report proposed by this amendment is needed to identify and evaluate the principal options available to Congress for establishing mechanisms of oversight and regulation of DOE nuclear programs and activities that are more effective and comprehensive than existing mechanisms.

By "nuclear activities" the Committee means those activities covered by indemnification agreements under the Price-Anderson Act. The panel may recommend regulatory or oversight approaches for these activities similar to those now in existence, or it may recommend an entirely different approach. The panel may also recommend different approaches for different categories of nuclear activities of the Department.

The panel's report should discuss the principal regulatory and oversight options considered by the panel but not recommended, as well as the approach specifically recommended for adoption by Congress. The Committee intends that the 101st Congress have a comprehensive range of choices to review in deciding whether to impose a new program of regulation and oversight on the Department's nuclear programs. The panel's report should provide a full discussion of the issues with respect to ways to regulate the nuclear activities of the Department to achieve the goals of assurance of health an safety, public confidence in DOE's management, increased accountability for management and operation, efficient and effective oversight and timely identification of problems.

Section-by-Section Analysis

Section 2 of the bill, as reported by the Committee, states the Congressional findings and purposes regarding renewal of an amendments to the Price-Anderson Act. Included in this section is a finding acknowledging the Federal Government's responsibility to provide full compensation to the public for all damages and injuries arising out of a nuclear incident relating to Federal activities involving radioactive waste.

Section 3 expands and extends the authority of the Secretary of Energy to indemnify Department of Energy contractors. The level of indemnification authorized is increased from the current level of $500 million to $6 billion constant 1988 dollars (as defined in section 7(c) of the bill). DOE is directed to indemnify its contractors through August 1, 2017, for activities under risk of public liability resulting from nuclear incidents.

This section also clarifies the application of the Price-Anderson indemnification system to all Federal activities associated with radioactive waste. The Committee intends that the Price-Anderson system be the means of indemnification for these activities. For liability claims arising from activities carried out under the Nuclear

Waste Policy Act of 1982 (Public Law 97-425), payments would be made from the Nuclear Waste Fund established under that Act.

Section 3 also extends coverage for DOE contractors under the Act to include any nuclear incident caused by exposure to nuclear material that has been illegally diverted from its intended place of confinement or intended transportation route.

Section 4 increases the aggregate liability for a single nuclear incident for DOE contractors to $6 billion in constant 1988 dollars (as defined in section 7(c) of the bill) so as to match the level of indemnification authorized under section 3. In the event that claims exceed that amount, Congress would be required to consider the appropriate measures to be taken in order to provide additional funds for full compensation.

Section 5 establishes a system for Congressional review under expedited procedures of a nuclear incident resulting from DOE contractor activities when it appears that additional compensation funds above the aggregate liability limit would be required. Based on the Department's assessment of such an incident, the President would prepare and submit to Congress one or more compensation plans for relief of claimants, and any legislative authorities required to implement the plans. The Committee intends that these plans, taken as a whole, provide for full compensation in an equitable and efficient manner for all valid claims. Congress would consider these plans under expedited procedures so that an opportunity is guaranteed to vote on any additional compensation required above the aggregate limit of liability.

Section 6 extends the waiver of defenses provision of the Price-American Act to include radioactive waste activities. The effect of this provision would be to trigger strict liability, and to preempt lesser State tort law standards in any lawsuit involving an accident with radioactive waste that DOE determines to be an "extraordinary nuclear occurrence."

Section 7 makes changes or additions to definitions in the Atomic Energy Act. The definition of "person" is amended to provide that if the Department of Energy undertakes directly the management of nuclear waste, rather than using contractors, the Secretary (and any DOE employee) would be treated as if he were a contractor indemnified under subsection 170d. This provision insures that the public protection provided by the Price-Anderson Act will not be lost if the Secretary decides to manage nuclear waste activities with Federal employees rather than by contract with private firms.

Section 7(c) defines the term "1988 dollars" for purposes of adjusting dollar amounts in the Price-Anderson Act for inflation. This adjustment involves a rate of inflation measured by the percentage change in the implicit price deflator for the Gross National Product as published by the United States Department of Commerce.

Section 8 makes technical changes in the subsection of the Price-Anderson Act relating to the prioritization of claims to recognize explicitly the role of the Secretary in situations in which the Secretary is the indemnitor for public liability from a nuclear incident.

Section 9 required the Department of Energy to submit a report to Congress every 10 years on the need to continue or modify the

Price-Anderson system in light of relevant issues that would have developed over that time.

Sections 10 and 11 make technical changes in subsections of the Price-Anderson Act to recognize explicitly the role of the Secretary in situations in which the Secretary is the indemnitor for public liability under the Price-Anderson Act.

Section 12 provides that, in the case of injury or damage resulting from an extraordinary nuclear occurrence (ENO), the Commission or the Secretary, as appropriate, may require indemnification arrangements to permit a claimant to file suit at any time after an ENO provided that he files within 3 years of the time he knew, or reasonably could have known, of his injury or damages. Under the existing provisions of the Price-Anderson Act, a statute of limitations of 20 years applies in these situations.

This provision of the Price-Anderson Act supercedes any more restrictive statute of limitations provision of State tort law.

Section 13 prohibits courts from awarding punitive damages under State law in any action that involves a nuclear incident if the action is brought against a Department of Energy contractor, subcontractor or supplier indemnified under the Price-Anderson Act. The provision insures that the Federal taxpayers will not have to pay punitive damages, consistent with established Federal policy, most forcefully stated in the Federal Tort Claims Act (28 U.S.C. 2674), that punitive damages may not be awarded against the Federal Government.

This provision does not preclude the award of punitive damages against persons, including licenesees of the Commission, who are not indemnified by DOE under the Price-Anderson Act. The Committee intends no preference, for or against the awarding of punitive damages in suites against such persons, be inferred from the inclusion of this provision in the bill.

Section 14 provides that the Department of Energy shall reimburse State or local governments for the costs of any precautionary evacuation ordered by a State or local official involving DOE activities indemnified under the Price-Anderson Act, provided that the evacuation decision is found to have been reasonable under procedures set forth in the section. This section also defines the term "precautionary evacuation".

Section 15 provides authority for the Secretary of Energy to assess civil penalties of up to $100,000 per day against DOE contractors, subcontractors, or suppliers indemnified under the Price-Anderson Act for any violation of a DOE rule, regulation, or order related to nuclear safety.

Section 16 provides authority to impose criminal penalties against any individual director, or employee of a contractor, subcontractor, or supplier indemnified under the Price-Anderson Act who knowingly and willfully violates any DOE rule, regulation, or order related to nuclear safety.

Section 17 would establish a new Office of Inspector General for Nuclear Programs within DOE to indentify, investigate, report on, and make recommendations with respect to problems with health, safety, and environmental management of DOE nuclear facilities and operations.

Section 18 would require the President to appoint a five-member independent panel to make recommendations to Congress by January 20, 1989, for improvements in regulation and oversight of DOE nuclear activities.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

June 8, 1987

Honorable J. Bennett Johnston, Jr.
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has reviewed S. 748, the Price-Anderson Act Amendments Act of 1987, as ordered reported by the Senate Committee on Energy and Natural Resources, May 20, 1987. This bill would increase the government's potential financial liability in the event of a nuclear accident involving federal contractors. Because there is no basis for predicting the number and magnitude of such incidents, CBO cannot estimate the cost of the increased liability. S. 748 does not change the liability ceiling for operators of commercial nuclear power plants.

Based on information provided by the Department of Energy (DOE), CBO estimates that the bill's provisions for a new Office of Inspector General for Nuclear Programs (within DOE) would cost $15 million to $20 million per year, starting in fiscal year 1988, assuming appropriation of the necessary funds. CBO estimates that the bill's provision for a Presidential panel to review DOE nuclear activities would cost approximately $250,000 in fiscal year 1988, and $150,000 in fiscal year 1989. No significant costs to the federal government would result from other provisions of S. 748.

Bill Purpose

S. 748 extends and revises certain provisions of the Price-Anderson Act, which governs the liability and indemnification of federal licensees and contractors in the event of a nuclear accident. Under this law, the Nuclear Regulatory Commission (NRC) regulates and indemnifies licensees, and DOE indemnifies its contractors. S. 748 makes indemnification changes that apply only to DOE contractors. There are no provisions in the bill that apply to operators of commercial nuclear reactors.

Under current law, which expires on August 1, 1987, DOE is authorized to enter into indemnification agreements with its contractors. Federal liability for these agreements is currently limited to $500 million per contractor, per nuclear accident. S. 748 requires DOE indemnification until August 1, 2017, and sets a new liability limit of $6 billion, in 1988 dollars, per nuclear accident. The $6 billion limit would increase in nominal dollars over time. The nominal liability limit would be adjusted to reflect the effects of inflation (as measured by the percentage change in the implicit price deflator for the Gross National Product).

S. 748 includes special procedures for Congressional action on claims exceeding the inflation-adjusted liability limit. In the event of a major nuclear accident involving a DOE contractor, the Congress may decide to appropriate funds to pay claims that exceed the new liability limit. However, the federal government is not liable for any claims beyond the $6 billion limit (as adjusted for inflation).

S. 748 explicitly makes federal indemnification applicable to certain activities or incidents. For example, it confirms that DOE must indemnify contractors involved with its nuclear waste programs. Claims related to the Nuclear Waste Fund are to be paid directly from the fund. The bill also provides for the reimbursement of the cost of precautionary evacuations resulting from incidents involving contractors indemnified by the federal government under certain conditions.

The bill includes provisions for civil and criminal penalties that may be assessed if DOE contractors violate any DOE rule, regulation, or order related to nuclear safety. Contractors are subject to a maximum civil penalty of $100,000 per day, subject to the discretion of the Secretary of Energy. For convicted criminal violations, individual directors, officers, or employees of indemnified contractors are subject to fines up to $25,000, or imprisonment for up to two years, or both.

S. 748 establishes a new office within the DOE: the Office of Inspector General for Nuclear Programs, responsible for supervision and coordination of auditing and investigative activities relating to DOE nuclear programs. S. 748 requires that the Inspector General for Nuclear Programs submit semi-annual reports to the DOE Secretary and the Congress, summarizing the activities of the office.

Finally, S. 748 requires the President to appoint a panel of five individuals to review DOE nuclear energy activities, and make recommendations to the Congress for regulations and oversight of those activities. The panel would provide a final report to the President and the Congress by January 20, 1989.

Budget Impact

The provisions affecting the government's financial liability would not increase federal spending in fiscal years 1987 through 1992 unless a nuclear incident involving federal indemnification occurs in those years. If such an accident were to occur, enactment of the bill would increase the governments's potential financial liability by $5.5 billion per accident for accidents caused by DOE contractors that are indemnified by DOE under current law. For certain incidents that may not be covered under current law, S. 748 would establish the government's potential liability at $6.0 billion (in 1988 dollars) per incident. (For example, the bill confirms that the Price-Anderson liability limit applies to federal nuclear waste programs.)

Based on information provided by DOE, CBO estimates that enactment of S. 748 would result in additional federal outlays of $15 million to $20 million per year, starting in fiscal year 1988, for the establishment and operation of an Office of Inspector General for Nuclear Programs within DOE. This estimate assumes that the new Inspector General Office would regularly conduct safety reviews of DOE nuclear programs, and that these reviews would require 150 to 200 new DOE employees plus some contractor support. CBO estimates that the panel required by S. 748 would result in additional federal outlays of approximately $250,000 in fiscal year 1988, and $150,000 in fiscal year 1989. For the purposes of these estimates, CBO assumes that S. 748 will be enacted by August 1, 1987.

Other provisions in the bill are expected to have no significant impact on federal outlays.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Edward M. Gramlich
Acting Director

cc: Honorable James A. McClure
Ranking Minority Member

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of S. 748, as reported.

The primary purpose of S. 748 as reported by the Committee is to extend the provisions of the Price-Anderson Act that establish an efficient scheme for compensating victims of damages by a nuclear incident that occurs in connection with activities covered by a contract with the Department of the Army. There is no direct regulatory impact from these provisions.

The Price-Anderson Act provides "no-fault" Government indemnification of contractors, subcontractors and suppliers involved in nuclear activities under contract to the Department of Energy. The Committee sought to modify the no-fault character of the program to assign a share of the risk of managing these activities to those who are indemnified under the Act.

Accordingly, the Committee, in section 15 of the bill, added to the Atomic Energy Act new authority for the Secretary of Energy to impose civil penalties for violations of Departmental nuclear safety rules, regulations, or orders by contractors, subcontractors or suppliers indemnified under the Price-Anderson Act. The Committee also, in seciton 16, added criminal penalties for knowing and willful violations of these rules, regulations or orders by any individual director, officer or employee of a firm indemnified under the Price-Anderson Act. These provisions will add new penalties to the enforcement authorities of the Secretary. The bill does not, however, authorize or impose new regulatory standards or rules governing activities of contractors to the Department of Energy over and above those already in existence.

In section 17, the Committee established an Office of Inspector General for Nuclear Programs in the Department of Energy to carry out auditing and investigative activities with respect to health, safety and sound environmental management in the nuclear programs and operations of the Department. The Committee intends that the Inspector General for Nuclear Programs be especially aggressive in identifying situations that could result in a nuclear incident. The Inspector General for Nuclear Programs is required to coordinate his activities with those of the Inspector General under section 208 of the Department of Energy Organization with a view to avoiding duplication.

These three sections of S. 748 as reported could lead to the imposition on the approximately 75 prime nuclear contractors and the approximately 65,000 subcontractors and suppliers thereto of new requirements for acountability for the operation of Departmental nuclear programs. The immediate economic impact of these requirements necessarily cannot be assessed accurately at this time. The immediate direct economic impact of increased risk-sharing with contractors, subcontractors and suppliers will be felt primarily in the cost of the Federal Government of providing contractual services to the nuclear programs of the Department. Indirect impacts associated with increased attention to safety could reduce Government exposure over the long run to costs associated with accidents that could occur in the course of these activities.

If a nuclear incident that occurs in connection with DOE nuclear activities should be found to be an "extraordinary nuclear occurrence", section 2 of the bill as reported would replace any applicable State statute of limitations with a 3-year discovery rule. In the case of an extraordinary nuclear occurrence, a claimant eligible to sue under the Price-Anderson Act would be permitted to file for damages at any time within 3 years after the time the claimant knew or reasonbly could have known of injury or damage. This new Federal standard would supercede any more restrictive State tort law standard.

Finally, section 18 of the bill directs the President to establish an independent panel to make recommendations to Congress for improved regulation and oversight of Department of Energy nuclear activities. This provision authorizes a report, and not regulation. However, the Committee is aware of the significant probability that this report will result in Congressional enactment of a new regulatory regime for the Department's nuclear activities. It is likely that any such new regime will have a significant regulatory impact on the firm undertaking those activities.

There is no impact on personal privacy from any of the provisions of S. 748 as reported.

The paperwork impact of sections 15, 16 and 17 of the bill may be substantial. The Department of Energy will undertake additional record gathering and record management in implementing its new enforcement authorities. Contractors, subcontractors and suppliers with liability exposure under those sections will attempt to document their adherence to applicable rules, regulations and standards in order to reduce the likelihood that enforcement actions will be undertaken by the Secretary. Necessary paperwork will increase significantly. Investigations and audits by the Inspector General for Nuclear Programs will also generate new paperwork requirements as these audits and investigations occur.

Executive Communications

There were no legislative reports received by the Committee from the Administration relating to S. 748. The following is the testimony submitted by the Administration at the March 18, 1987, Committee hearing, the written testimony of the Nuclear Regulatory Commission on the bill submitted to the Committee on April 2, 1987, a letter dated April 7, 1987, from the Department of Justice and a letter dated May 5, 1987, from the Secretary of Energy.

STATEMENT OF
JAMES W. VAUGHAN, JR.
PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR NUCLEAR ENERGY
U.S. DEPARTMENT OF ENERGY
BEFORE THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
U.S. SENATE

MARCH 18, 1987

Mr. Chairman, it is a pleasure to be here today to discuss extending and amending the Price-Anderson Act.

We appreciate this Committee's leadership in addressing this matter early in this session of Congress. The Price-Anderson Act is a forward-looking mechanism designed to assure the American public that their claims for injury will be promptly addressed and paid in the event of a major nuclear incident. Price-Anderson is a key factor in assuring the continued participation of the private sector in Department of Energy (DOE) nuclear programs and activities as well as ensuring the continued viability of this Nation's commercial nuclear power operations. The Department strongly supports a reasonable extension of the Act.

IMPORTANCE OF PRICE-ANDERSON TO DOE OPERATIONS

The unique umbrella protection provided by Price-Anderson continues to be invaluable in the conduct of the Federal Government's nuclear activities. The Department is highly dependent on products and services offered by various businesses, professional organizations, educational institutions, and other entities. Without continuation of the Price-Anderson Act,

contractors at all levels may well refuse to continue doing business with the Department, including those organizations with which the Department contracts to manage major Government-owned installations.

Price-Anderson balances the limited liability of DOE contractors (or nuclear plant operators for licensed facilities) against certain, rapid, and widely available compensation to the public who may be injured in the unlikely event of a major nuclear incident. Additionally, Price-Anderson "channels" financial protection coverage through the prime DOE contractor to subcontractors, suppliers, and vendors who sell, design, build, test, or perform other work or services on any component of a nuclear facility or device. The Department has no other means of indemnifying contractors that would provide this unique mechanism for protecting its contractors and their subcontractors from liability claims, while providing potential claimants a mechanism for prompt and assured payment of claims.

THE NEED TO CONTINUE PRICE-ANDERSON

On August 1, 1987, Price-Anderson authority to indemnify DOE contractors and cover new nuclear facilities licensed by the Nuclear Regulatory Commission (NRC) will expire. This will have little effect on existing NRC-licensed reactors, which are covered under Price-Anderson for the life of the reactor. However, DOE will not be authorized after August 1 to indemnify its contractors under Price-Anderson in new or renewed contracts

unless Congress acts now to extend this important provision of the Atomic Energy Act.

Of equal importance, a future without some Price-Anderson type of coverage would inhibit our collective ability to revitalize the nuclear power option in the near-term. The forward-looking structure and framework of the Price-Anderson nuclear insurance and indemnification system established by Congress in 1957 remains equally important today in assuring that our future electricity needs will be met.

LEGISLATIVE PROVISIONS

In 1983, DOE and the NRC each submitted their recommendations for extending the Price-Anderson Act. The subject has been debated extensively over the past 2 years, and we have testified 5 times during that period on various legislative proposals, including those introduced during the 99th Congress. DOE continues to support the views expressed in our prior testimony, in which we indicated that legislation similar to the version of S. 1225 reported by this Committee in May 1986 would be acceptable. We are also well aware that there have been differing views expressed on various key provisions of proposed Price-Anderson legislation, and that this Committee was instrumental near the end of the 99th Congress in drafting a proposed Senate compromise bill to attempt to reconcile these views.

The Department is prepared to support such compromise legislation this session if the "total package" is one that provides an acceptable framework

for continuing the Department's nuclear operations under Price-Anderson.

Two key elements of such a framework are:

- o A limitation on liability should be included for both the traditional nuclear activities (involving DOE contractor and NRC-licensed nuclear operations) and for high-level and transuranic radioactive waste disposal activities. Congress should retain the right to review an accident and its consequences before action is taken to pay claims exceeding this limit.

- o The legislation must not include any provision, which had been suggested by some last year, that would abrogate the sovereign immunity provisions of the Federal Tort Claims Act and inappropriately permit the Government to be sued for its actions as if it were a contractor.

In addition to these essential items, the following significant elements should also be included:

- o Regarding high-level radioactive waste storage, transportation and disposal, (1) these activities should have indemnity protection and liability limits equivalent to other DOE nuclear programs; (2) there are no peculiarities in waste that would argue for a separate scheme of protection; (3) the waiver of defenses provision should be modified to expressly provide coverage for waste activities; (4) within reasonable limitations set by the Congress, the public should continue to be assured of a timely and reliable source of funds for the payment of claims in the event of a nuclear accident; and (5) the payment for claims arising out of activities conducted under the Nuclear Waste Policy Act should be paid from the Nuclear Waste Fund.

- o Liability limits for DOE contractors should be comparable to those for those activities licensed by the NRC.

- o A reasonable limit on the statute of limitations, e.g., no more than 30 years, should be included and the 3-year discovery period for injury should be retained.

CONCLUSION

In summary, it is important that we proceed quickly to complete legislation on a reasonable extension of the Price-Anderson Act as early as practical in this session of Congress. The certainty of continued coverage under this unique legislation is important for both the Department and its contractors. Little time is left before the August 1, 1987, expiration date to remove the uncertainty that exists in firming up contractual arrangements for activities beyond that date.

We recognize that there are differing views on liability limitations, treatment of waste activities, and other provisions of the Act that have been debated in the past 2 years. However, the time has passed for debate and the time is at hand for action to provide a continuing system of indemnification and liability protection that balances the needs of contractors and nuclear facility operations with assured protection of the public.

The Department stands ready to support this effort. We hope our testimony and comments today, plus any further assistance or information we can provide regarding specific features of proposed legislation, will enable you to favorably report needed legislation to the Senate in the near future. My colleagues and I would be happy to respond to any questions you may have at this time.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

CHAIRMAN

April 2, 1987

The Honorable J. Bennett Johnston, Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

I am pleased to respond to your request for the Commission's written testimony on the need for extension of the Price-Anderson Act in general, and on S. 748, a bill to extend the Price-Anderson Act as it pertains to contractors of the Department of Energy. A legal opinion, prepared by our General Counsel, on the situation that would arise should the Price-Anderson Act not be extended beyond August 1, 1987, is also enclosed.

Commissioner Asselstine did not participate in this response. Commissioner Bernthal was not available to participate.

Sincerely,

Thomas M. Roberts
Acting Chairman

Enclosures:
1. Testimony
2. Opinion

cc: Senator James A. McClure

ENCLOSURE 1

STATEMENT OF

U.S. NUCLEAR REGULATORY COMMISSION

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

CONCERNING THE

PRICE-ANDERSON ACT

AND

S. 748

The Commission would like to emphasize at the outset that the NRC's primary concern is the public health and safety. Our efforts are directed to preventing accidents and ensuring the safe use of nuclear power. Our agency's mission is not primarily to evaluate the financial ability of utilities to participate in arrangements such as those established by the Price-Anderson Act. Nonetheless, while our overriding interest is that the plants be operated safely, we wish to work with you to assure that in the event of a significant release of radiation the public would be promptly and adequately compensated for losses suffered.

As you know, when the Price-Anderson Act became law in 1957, it had two basic objectives:

> First, to ensure that adequate funds would be available to the public to satisfy liability claims in the event of a catastrophic nuclear accident; and

Second, to remove the deterrent to private sector participation in atomic energy presented by the threat of potentially enormous liability in the event of such an accident.

The Commission believes that even with the passage of time and the successful history of operation of over 100 nuclear power plants in the United States, these two basic objectives are still important to maintaining the nuclear power option which has been established by the Congress for our country. While we continue to believe that the possibility of a catastrophic nuclear accident in the United States is very small, if there were to be such an accident, comprehensive, prompt and equitable settlement of public liability claims must be assured. Consistent with this goal, any modification of this legislation must be undertaken cautiously lest it unwittingly upset the delicate balance of obligations between operators of nuclear facilities and the U.S. Government as representative of the people. We believe it is important to keep in mind that the purpose of this legislation is to serve the American people by achieving two goals -- preserving an energy option recognized by the Congress as important to the nation and assuring prompt payment of claims in the event of a nuclear accident. We should continually ask the question -- are these goals for the American people being served? -- as we review the various provisions of this legislation.

Background

Before expressing our requested views on the need to extend the Price-Anderson Act and on S. 748, the Commission would like to describe the Price-Anderson Act in general to set the framework for the discussion to follow.

The Price-Anderson Act was initially enacted for a 10-year period, but was extended and amended in 1965 and 1975 and will expire on August 1, 1987 without Congressional action.

Licensees of large commercial nuclear power plants must provide proof to the NRC that they have the maximum amount of private nuclear liability insurance -- generally referred to as financial protection -- that is available. That financial protection, currently $700 million, consists of a primary layer of nuclear liability insurance of $160 million and a secondary retrospective premium insurance layer. This secondary layer works in the following way. In the event of a nuclear accident causing damages exceeding $160 million, the licensees of each commercial nuclear power plant would be assessed a prorated share of damages in excess of the primary insurance layer up to $5 million per reactor per incident. With 108 large commercial reactors under this system today, the secondary insurance layer totals up to $540 million.

The Price-Anderson Act authorizes the Commission to enter into indemnity agreements with reactor licensees. These agreements specify the amount of financial protection, if any, required of licensees. The agreements also specify the obligation of the Federal Government to provide funds when a nuclear accident exhausts private liability insurance or when no private liability insurance is required, such as with small university test reactors. This government obligation to provide funds is called "government indemnity."

The Price-Anderson Act places a ceiling on the total amount of public liability in an accident. This ceiling, or "limit of liability," for large commercial nuclear power plant licensees is currently tied to the maximum

amount of insurance available through private sources. For many years, the limit of liability was $560 million. Congress provided that the limitation on liability would grow, once the total protection of the primary and secondary layers of insurance reached and passed $560 million. In November 1982, the $560 million level was reached and the government's indemnity was, as a practical matter, essentially eliminated for large reactors. The present limit of $700 million will continue to increase in increments of $5 million for each new commercial reactor licensed to operate.

Congressional Activity in 1986

The Congress recognized that the Price-Anderson Act would expire by its own terms on August 1, 1987. Thus both the House and the Senate began in 1986 actively to consider the terms by which the Act should be extended. Clearly the limitation on liability was the most difficult and controversial issue associated with extending the Act. Although agreement on the limitation on liability was never reached in 1986, out of the debate it became clear that there was a strong consensus to favor a change in the structure of the liability limit, though there was considerable support for some form of a limitation on liability. S. 1225, introduced in the last Congress by Senators Simpson and McClure, and reported by the Senate Committee on Energy and Natural Resources, contributed substantially to the consideration of the need to extend Price-Anderson in the 99th Congress.

The Commission was called upon last year to present to the Congress its views on the various Price-Anderson bills that were under consideration, and in particular on the liability limit. The Commission's position then, as now,

recognized that, as in most legislation, a balancing of equities must be made by the Congress and that various alternatives, based on different balances, might provide adequate assurance that all public liability claims could be paid. In that context, a majority of Commissioners favored Price-Anderson Act extension amendments that would provide for a substantially greater liability for reactor licensees than is provided by current law but would retain the concept that any such liability would be bounded by a predetermined cap or cutoff.

The Commission's Views

The Commission supports the extension of the Price-Anderson Act. The Commission's primary goals for financial protection of the public are to assure prompt and full payment for public losses. In particular, we favor an increase in annual retrospective premium for nuclear power reactors, but retention of some large ceiling on liability for any nuclear incident. We also favor explicit provisions calling for Congress to act in the event that an accident results in damages in excess of the liability limit.

As noted earlier, the financial side of nuclear power operation is not the Commission's primary expertise. Accordingly, we do not take a position on the precise dollar amount of retrospective premiums that should be required from reactor licensees. While past staff work has indicated that utilities will probably be able to pay an annual assessment of around $10 million, such as was suggested in the 99th Congress, and is currently suggested in H.R. 1414, introduced recently in the 100th Congress by Congressmen Udall and Sharp, such a collection would be an extraordinary undertaking. Consideration of such an

undertaking should be mindful that the contemplated collection could well take place in an atmosphere of impaired utility earnings resulting from the ramifications of the accident itself. The Commission has no special foresight as to the burden on the industry in such an atmosphere. If there is to be such a large annual assessment, it would be useful if the annual assessment is expressed on a per reactor basis, rather than on a per reactor-per incident basis. Alternatively, the Commission could be authorized to provide limited relief from the obligation to meet the full annual retrospective premium in the case of multiple incidents in any year or where a utility is licensed to operate more than one facility.

The Commission continues to support legislation that would prohibit the payment of punitive damages from federal or Price-Anderson funds. The Commission would not bar the assessment of punitive damages, where appropriate, against a liable party.

The Commission supports inclusion of precautionary evacuations under Price-Anderson coverage where such evacuations are compensable under state tort law and are ordered by authorized state or local officials.

The Commission has consistently supported a recommendation that the Congress extend the statute of limitations for filing a public liability claim arising from a nuclear accident from 20 years to 30 years. This extension is recommended in order to provide greater assurance that latent injuries caused by a nuclear accident are provided protection under the Price-Anderson system. The Commission continues to support an increase to 30 years from the current 20-year period in which those indemnified waive a right to plead any state

statute of limitations. The inherent difficulties in proving that latent injuries were caused by the nuclear accident and not by some other factor or combination of factors appear to us to argue for some final cutoff to initiation of claims once a generous allowance has been made for accommodating the discovery of those injuries.

S. 748

S. 748, introduced by Senators Johnston, McClure, and Domenici, would extend and revise the Price-Anderson Act, as it pertains to Department of Energy contractors, for twenty years. The Commission generally defers to the Department of Energy (DOE) on the need to revise and extend the Act for DOE contractors. However, the Commission believes that it is important for a system to be in place to provide for public compensation for nuclear accidents at a DOE waste repository licensed by the Commission that is at least as generous as the system that applies to nuclear power reactors. Since it has been generally understood that such a system could appropriately be provided by "contractor" Price-Anderson provisions administered by DOE, we would favor an extension and revision of the "contractor" Price-Anderson provisions so that this system could be in place.

Finally, while we understand the special concerns of DOE and its contractors that "contractor" Price-Anderson be extended, we would much prefer a comprehensive extension and revision of Price-Anderson, which includes NRC licensees, if that is at all possible before the Act is slated to expire on August 1.

ENCLOSURE 2

COVERAGE OF CURRENT LICENSEES
UNDER THE PRICE-ANDERSON ACT IF THE ACT IS NOT EXTENDED

Set forth below is an analysis prepared by the NRC Office of the General Counsel of the coverage of current NRC licensees under the Price-Anderson Act ("Act") should the expiring provisions of that Act not be extended beyond August 1, 1987.

I. Significance of the August 1, 1987 Date in Section 170c

The provisions of the Act applicable to most licensees contain only one expiration date.[1] That date, August 1, 1987, is found only in section 170c, which provides as follows:

> The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, 1987, for which it requires financial protection of less than $560,000,000, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee....

The other provisions of the Act, including the provisions authorizing and requiring financial protection (sections 170a and 170b), limiting liability (section 170e) and waiving defenses (section 170n), do not contain any express expiration date.

---

[1] An expiration date appears also in section 170k, which will be discussed separately.

While the applicability of the section 170e liability limitation is confined to "persons indemnified," thereby suggesting a necessary correlation with indemnity agreements under section 170c, the term "person indemnified" is broadly defined in section 11t to include not only "the person with whom an indemnity agreement is executed," but also anyone "who is required to maintain financial protection, and any other person who may be liable for public liability." Accordingly, the issue arises whether some or all of the provisions of the Act other than section 170c continue in effect beyond August 1, 1987, even if section 170c is allowed to expire.

For the reasons set forth below, a careful analysis of the Act's language and legislative history shows that the provisions of the Act are not severable, and that if the date in section 170c is not extended, other provisions in the Act, including those requiring financial protection, limiting liability, and waiving defenses, expire along with section 170c.

A. Before 1975 All of the Act's Provisions Were Expressly and Inextricably Interconnected

Prior to enactment of Public Law 94-197 in 1975, section 170c provided as follows:

> The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, 1977, for which it requires financial protection agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which

> is in excess of the level of financial protection required of the licensee.... [Emphasis added.]

At the same time, section 170a provided that:

> Each license issued under section 103 or 104 and each construction permit issued under section 185 shall ... have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with section 170 b. to cover public liability claims. Whenever such financial protection is required, it shall be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection 170 c. ... [Emphasis added.]

Accordingly, before 1975 there was an inextricable connection between financial protection and an indemnity agreement -- it was not possible to have one without the other. Thus, if the authority to indemnify expired, then the authority to require financial protection must be regarded as having expired as well.[2] Also, the waivers of defenses would expire because they were, as now, tied to the existence of either financial protection or an indemnity agreement.[3] Finally, while the liability limitation was then, as now, expressed in terms of "persons indemnified,"

---

[2]The only other possible reading, that the authority to issue licenses expired, cannot be sustained since there is absolutely no support in the Act's legislative history for such a drastic proposition.

[3]Section 170n provides in pertinent part that "the Commission may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive ...."

that term was then defined as "the person with whom an indemnity agreement is executed and any other person who may be liable for public liability." This definition made no sense without an indemnity agreement, for without one the definition degenerated into the strange phrase "other person who may be liable ...." The term "other" in the definition clearly implied a connection between "persons indemnified," and thus the liability limitation, and an indemnity agreement.

Thus, before 1975 when the Act was last extended and modified, sections 170a, 170b, 170c, 170e, and 170n were all expressly and inextricably intertwined -- if the authority to indemnify in section 170c expired, then the other provisions expired as well.

B. Nothing in Public Law 94-197 (1975) Changed the Concept that the Act Continued or Expired as a Whole.

In 1975, with the enactment of Public Law 94-197, the Act was extended and modified to include a new layer of financial protection and an eventual phasing-out of indemnity. The phasing-out of indemnity, which was to occur as the secondary financial protection layer exceeded $560 million, required conforming changes to section 170a, section 170c, and section 11t. Section 170a was changed so that indemnity "may," rather than "shall," be a license condition if financial protection is required. Section 170c was amended to state that indemnity agreements were required only for licenses "for which it [NRC]

requires financial protection of less than $560,000,000." And the definition of "persons indemnified" in section 11t was amended to add a person "who is required to maintain financial protection."

These conforming changes had the effect -- which the below analysis will show was unintended -- of eliminating the essential interrelation of sections 170a, 170b, 170c, 170e, and 170n which had heretofore been explicitly expressed in the language of the Price-Anderson Act and therefore giving the appearance that these various provisions could be read and could stand separate of each other. This is because once financial protection exceeded $560 million, an indemnity agreement was no longer required and, under amended 170a, financial protection could exist as a separate license condition without indemnity.[4] And, so long as financial protection was required, the new definition of "person indemnified" still made sense. Thus, it became possible to read the Act as if the financial protection provisions in section 170a and b, the liability limitation in section 170e, and the waiver of defense provision in section 170n, all had vitality separate from section 170c.

---

[4]Prior to the 1975 amendment, the limit of liability was $560 million of which not more than $500 million could be covered by an indemnity agreement. The 1975 amendment had an objective of getting the government out of the indemnity business prospectively once the financial protection reached and exceeded $560 million. Thus, the need for the conforming changes in the sections of the Price-Anderson Act.

That this reading was not intended is clear from the legislative history. First, there is no indication in the 1975 Act's legislative history that the pre-1975 concept that the Act expired as a whole was intended to be changed by the 1975 law. Given the careful attention to detail in the legislative history, especially in the Joint Committee's reports, there would certainly have been some discussion of such a basic change in concept if a change was intended.

Second, the 1975 legislative history shows clearly that Congress was treating the Act as a whole, to be extended only as a whole. E.g., S.Rep. No. 94-454, 94th Cong., 1st Sess., at 2 ("the Act is scheduled to expire on August 1, 1977"), 1 ("the bill meets the need by extending the Price-Anderson Act for an additional 10 years"), 7-8 (conclusion that if the Act expired, there would be no waivers of defenses or limitation on liability.).

Finally, a proposal by Congressman McCormick during the recorded open markup session to make the Act permanent was withdrawn after it encountered opposition from those who preferred a fixed expiration date. In its place, language was added to the Joint Committee report that:

> The Joint Committee wishes to stress that there are a number of features of the Price-Anderson Act which should be viewed as permanent. These include the mandatory insurance coverage, the no-fault provisions, the provisions for consolidation of claims in a single federal court and for advance payment of claims, the

> contractor indemnity provisions, and the mandatory retrospective premium system. These elements make up a pattern of public protection which must be continued. The provision for termination in 1987 should be viewed as a device to ensure that Congress will reassess the situation prior to that time and make revisions as required, rather than as congressional intent to provide for an eventual termination of the federal regulation of nuclear liability insurance. S.Rep. No. 94-454, 94th Cong., 1 Sess., at 9.

The intent behind this Report language was clear: "[i]t's not binding if it's in the Report. It's merely an expression of a 1975 Congress talking to a 1985 Congress, only making a suggestion." "Open Markup of H.R. 8631 and S. 2568: Price Anderson Act Amendments", Meeting of the Joint Committee on Atomic Energy, 94th Cong., 1st Sess. at 47-49.

Congressman McCormick's proposal, which was in effect rejected on its merits, presumed that the Act must continue or expire as a whole. A different construction of the Act, which would allow portions of the Act relating to such things as liability limitation to continue for licenses issued beyond 1977, would be inconsistent with the Joint Committee's rejection of McCormick's proposal.

II. Effect of a Non-Extension on Power Reactor and Other Facility Licensees

As shown above, the Act must be construed as a whole. Thus, if the authority to indemnify expires, then the remainder of the Act, including the limitation on liability, authorization to

require financial protection to satisfy liability claims, and waivers of defenses, expires as well. However, the expiration date of August 1, 1987 is expressed in terms of future licenses. As to facility licenses issued before that date the language of section 170c of the Act is clear:

> With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 1987, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 1987.

Thus, without an extension of the Act, the existing provisions of the Act continue unaffected for all power reactors and other facilities which received construction permits before August 1, 1987. It would seem that renewals of operating licenses would also be covered by the Act, so long as the original construction permit was issued prior to August 1, 1987. But, for plants which receive construction permits after August 1, 1987, the Price-Anderson Act would not apply. This means, among other things, that NRC could not require liability insurance or waiver of defenses, and there would be unlimited liability.

III. Effect of a Non-Extension on Non-Profit Reactors

Section 170k of the Act provides as follows:

> With respect to any license issued pursuant to section 53, 63, 81, 104a., or 104c. for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection 170a.

> With respect to licenses issued between August 30, 1954, and August 1, 1987, for which the Commission grants such exemption:
>
> > (1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of $250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, excluding cost of investigating and settling claims and defending suits for damage:
> >
> > * * * * *
>
> Any licensee may waive an exemption to which it is entitled under this subsection. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 1987, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 1987. [Emphasis added.]

As can be seen from the text, the ambiguity created by the text of the 1975 law does not extend to certain non-profit educational and research licenses. Similar to the case prior to 1975 for power reactors, for these licenses indemnification is mandatory. Since there is no financial protection, if there can be no indemnity there can be no waiver of defenses and the definition of "persons indemnified" becomes meaningless. Thus the law itself is quite clear that the Act as a whole does not apply to any non-profit educational and research licenses issued after August 1, 1987. As was the case for power reactors, operating licenses and renewals of operating licenses for reactors subject to 170k would be subject to the Act so long as the original construction permit was issued prior to August 1, 1987.

IV. Effect of Non-Extension on Other Licenses

The effect of a non-extension of the Act on materials licenses issued under sections 53, 63, or 81, is similar to the effect on power reactors and section 170k reactors. The Act expires as a whole. Thus no materials licenses issued after August 1, 1987 could have Price-Anderson Act protection. It is not clear whether renewals of licenses after this date, where the original licenses issued before the date, would or would not be covered.

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

07 APR 1987

Honorable J. Bennett Johnston
Chairman
Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Chairman Johnston:

Last year the Department of Justice sent Senator James A. McClure a letter expressing its strong objections to a provision in S. 1225 (the "Price-Anderson Act Amendments Act of 1985") which would have treated the Secretary of Energy as a government contractor for purposes of determining the federal government's potential tort liability for certain activities relating to the storage or disposal of radioactive waste. It is our understanding that the Energy and Natural Resources Committee is scheduled to mark up S. 748 (the "Price-Anderson Act Amendments Act of 1987") on April 8. The bill contains a provision similar (Section 7(a)) to the provision that was the subject of the Department's letter last year on S. 1225. Accordingly, we wish to inform the Committee before its mark-up session of our continuing strong opposition to the provision, and the reasons for our concerns.

The Administration is concerned that Section 7(a), along with Section 6(a)(2),[1] would be read by the courts as a waiver of the United States' sovereign immunity, with significant implications for the United States as a litigant, both for the type of cases specifically addressed by the Section as well as for other types of tort claims for which the Section could serve as a precedent. We thus urge you and the other members of the Senate Energy and Natural Resources Committee to delete Sections 7(a) and 6(a)(2) from S. 748. Moreover, as you know, in light of the significance of Sections 7(a) and 6(a)(2) to the Federal Tort Claims Act and to the United States' tort liability, as well as because of the constitutional problems raised by the Sections, the Senate Judiciary Committee has jurisdiction over the issues

[1] Section 6(a)(2) appears to add the activities covered by Section 7(a) to the category of activities to which the Price-Anderson Act's waiver of defenses apply.

raised by the Sections and, accordingly, may wish to review the matter.

Section 7(a) would amend the definition of "person" contained in Section 11.s. of the Atomic Energy Act, 42 U.S.C. § 2014(s), as follows:

> In the event that the Secretary of Energy, in carrying out any activity that the Secretary is authorized or directed to undertake pursuant to this Act or any other law involving the risk of public liability for a nuclear incident as a result of the storage or disposal of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste (including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility), undertakes such activity in a manner that involves the actual physical handling of spent nuclear fuel, high-level radioactive waste, or transuranic waste by the Secretary, the Secretary shall be considered as if he were a contractor with whom an indemnity agreement has been entered into pursuant to subsection 170 d. of this Act.

Read in conjunction with Section 6(a)(2),[2] an evident construction of the two Sections would be as a waiver of sovereign immunity. That is, the Sections could be read as permitting the United States to be sued under the same terms and conditions as would apply to one of its contractors. Such a result would not only represent a drastic departure from existing law, but would expose the United States to liability in ways that the Committee may not fully appreciate.

---

[2] Section 6(a)(2) adds the following additional category of activities to those to which the Price-Anderson Act's waiver of defenses apply:

> (d) arises out of or results from or occurs in the course of activities undertaken by the Secretary, including activities undertaken by contract, in connection with the storage or disposal of high-level radioactive waste, spent nuclear fuel, or transuranic waste, including the transportation of such materials to a storage or disposal site or facility, and the construction and operations of any such site or facility,

Among the defenses which are waived by the Price-Anderson Act are fault, governmental immunity, and the statute of limitations (other than the limitations period established by the Act).

As you know, forty years ago the Congress carefully considered and resolved the question of when the United States should be liable for the negligence of its employees. In undertaking this task, the Congress correctly recognized that there are many conflicting interests in determining the parameters of governmental liability. On the one hand, there is a justified desire to compensate persons injured by government negligence. On the other hand, there are compelling governmental interests that must be protected. The result of these congressional deliberations was the Federal Tort Claims Act. The Act, which carefully balances numerous conflicting interests and purposes through a number of qualifications and conditions, has served this Nation admirably since its enactment. While recent developments in tort law necessitate some refinements to the Act,[3] the general structure and philosophy of the Act have been remarkably successful in dealing with the sensitive and difficult question of when to compensate persons who believe that they have been injured by governmental activity.

If construed as a waiver of sovereign immunity, Sections 7(a) and 6(a)(2) of S. 748 would have the effect of establishing an entirely new liability scheme diametrically different from that established by the Federal Tort claims Act. Instead of providing for governmental liability consistent with the carefully constructed qualifications and conditions of the Federal Tort Claims Act, the Sections could be construed as a blanket waiver of sovereign immunity leaving the United States only with those defenses available to one of its contractors. To appreciate the full magnitude of this liability scheme, it is important to consider some of the defenses and limitations of the Federal Tort Claims Act that might not be available to the United States under Sections 7(a) and 6(a)(2). They include:

- The discretionary function defense, under which the United States is not liable for the discretionary policy decisions of either the Executive or Legislative Branches;

- the Feres doctrine, under which the United States is not liable in tort for injuries to servicemen and veterans incident to their active duty service;[4]

---

[3] The Administration has proposed legislation to improve the Act with regard to certain issues. See "Federal Tort Claims Reform Act of 1986," introduced by Senator Mitchell McConnell as S. 2441 (99th Congress).

[4] See Feres v. United States, 340 U.S. 135 (1950).

- The negligence provision, which provides that the United States can only be found liable for acts of negligence, and not under any strict or absolute liability doctrine;

- the no jury provision, which provides that the United States cannot be subjected to a jury trial;

- the administrative claims provision, which requires that tort claims against the United States first be filed administratively with the responsible federal agency; and

- the attorneys' fee provision, which restricts attorneys' fees to 20% of administrative settlements and 25% of settlements and judgments obtained after suit has been filed.

We are strongly opposed to establishing a governmental liability scheme that does not include the above defenses and limitations. In particular, the omission of the discretionary function defense -- a defense which has a constitutional underpinning in the separation of powers between the Legislative and Executive Branches and the Judicial Branch -- has implications of the most serious nature.

The discretionary function defense is designed to prevent the courts from reviewing the lawmaking and policymaking activities of the Congress and of the Executive Branch. As recently noted by the Supreme Court in a unanimous decision reaffirming the importance of the discretionary function defense:

> The discretionary function exception . . . marks the boundary between Congress' willingness to impose tort liability upon the United States and its desire to protect certain governmental activities from exposure to suit by private citizens.
>
> . . . .
>
> Congress wished to prevent judicial "second guessing" of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort. By fashioning an exception for discretionary governmental functions, including regulatory activities, Congress took "steps to protect the Government from liability that would seriously handicap efficient government operations."

United States v. Varig Airlines, 467 U.S. 797, 807-14 (1984) [citations omitted]. [5]

Sections 7(a) and 6(a)(2), however, could have precisely the effect of exposing the United States to liability for the discretionary policy decisions of the Secretary of Energy and his subordinates, and possibly even for the decisions of the President and the Congress. For the reasons that the Congress has appreciated for the last forty years, and that the Supreme Court has repeatedly reaffirmed, this would be a most ill-advised course.[6]

Finally, we would note that Sections 7(a) and 6(a)(2) violate the policy the Congress has closely followed since the enactment of the Federal Tort Claims Act (and which in no small part led to its enactment) that the claims of all persons who seek damages from the United States for allegedly tortious acts will be treated equally. Once the Congress begins to grant preferential treatment to certain types of claims or groups of plaintiffs, it will not only create a situation that is fundamentally unfair to all other Americans who also want to sue the United States for their injuries, but it will invite other politically well-organized groups to demand the same treatment. Whatever else the Committee may believe about the Federal Tort Claims Act, the Act has for four decades held true to the

---

[5] While Varig involved a regulatory program, it is well established that the discretionary function defense is not limited to regulatory activities. See Dalehite v. United States, 346 U.S. 15 (1953). Indeed, the Court in Varig quoted the following testimony of an Administration witness in a 1942 House Committee hearing:

> It is neither desirable nor intended that the constitutionality of legislation, the legality of regulations, or the propriety of a discretionary administrative act should be tested through the medium of a damage suit for tort. The same holds true of other administrative actions not of a regulatory nature, such as the expenditure of Federal funds, the execution of a Federal project and the like.

467 U.S. at 809-10. As noted by the Court, this testimony was incorporated into the House Report almost verbatim. Id. at 810 n.9.

[6] To the extent that discretionary policy decisions by Federal officials are reviewed for their "reasonableness" by the courts (and, under some circumstances, by juries), we believe that Sections 7(a) and 6(a)(2) raise profound separation of powers issues.

principle that "all Americans should be equal in the eyes of the law." It is a policy which has worked well and fairly, and we would urge the Committee to consider very carefully the implications of abandoning this principle.

As noted, if the Committee decides not to delete Sections 7(a) and 6(a)(2) from S. 748, the Senate Judiciary Committee may wish to review the above discussed issues. The possible construction of the Sections as a waiver of the United States' sovereign immunity is a matter that ordinarily would be reviewed by the Judiciary Committee. In addition, the Sections have serious implications for the Federal Tort Claims Act, also a matter that the Judiciary Committee may wish to consider. And, perhaps most importantly, the Sections raise significant constitutional problems with regard to the separation of powers between the Legislative and Executive Branches and the Judicial Branch. These constitutional problems should be aired and resolved, and the Judiciary Committee seems an obvious and appropriate forum for such deliberations.

Accordingly, we strongly urge the Senate Energy and Natural Resources Committee to delete Sections 7(a) and 6(a)(2) from S. 748. The Office of Management and Budget has advised that there is no objection to the presentation of this report to the Congress, and that Sections 7(a) and 6(a)(2) are not in accord with the program of the President.

Sincerely,

John R. Bolton
Assistant Attorney General

cc: Honorable James A. McClure
Honorable Joseph R. Biden, Jr.
Honorable Strom Thurmond
Honorable Alan K. Simpson

THE SECRETARY OF ENERGY
WASHINGTON, D.C.

May 5, 1987

Honorable J. Bennett Johnston
Chairman
Committee on Energy and
Natural Resources
United States Senate
Washington, D. C. 20510

Dear Senator Johnston:

I wanted to write to you to underscore the Department's concerns with S.748 which your committee has scheduled for further markup on May 6.

The renewal of Price-Anderson is critical to the future of nuclear power not only as an energy option for this country but also as an instrument for government-sponsored research and national security activities. The underlying thrust of S.748 continues the basic Price-Anderson objective of ensuring prompt compensation in the event of a nuclear accident at DOE facilities. In addition, the Department supports the bill's approach to establishing a limitation on liability as an essential step toward the fulfillment of Price-Anderson objectives.

Our concerns, however, involve the bill's provisions that would stretch beyond the compensatory objective of Price-Anderson, and stray into the areas of DOE contractor accountability and contractor penalties.

We appreciate the desire that you and other committee members have expressed for ensuring that DOE contractors conform their conduct to the highest standards of safety and care. We share this objective, but are concerned that certain provisions proposed during markup could severely jeopardize the continued availability of contractors to operate our facilities.

Specifically, we believe the inclusion of a subrogation or civil penalties provision in the bill would strongly discourage contractors from commencing or continuing their relationships with the Department. These contractors engage in a special working relationship with the Department to operate Government-owned facilities which are vital to our national security and research and development activities. These relationships are founded on an understanding that the interests of the Department

and its contractors in running these facilities are largely inseparable. To obstruct the mutuality of these associations with the threat of government instituted lawsuits or severe civil penalties would force contractors into the difficult position of providing services in the national interest only at a risk of significant financial liability to themselves. This result would not only be inconsistent with the objectives of Price-Anderson, it would impose severe burdens on efforts to maintain the basic security of the United States.

In addition, as the Department of Energy and the Department of Justice have previously stated, we are opposed to any provision that would further subject the Government to liability by permitting suits against the Secretary of Energy as if he were a contractor. The issue of Government liability is a sensitive one, and the balance between providing compensation in tort cases while enabling the Government to freely perform its duties was struck long ago in the Federal Tort Claims Act. Changing the rules of Government liability as contemplated in S.748 would represent a major departure from existing law, upsetting well established principles that have governed this area of law for years.

It is our hope that the Price-Anderson Act, which was passed to enable the orderly development of nuclear power and ensure its availability for research and national security needs, can be renewed without counterproductive provisions that would discourage contractors from operating facilities which are critical to the national interest. Unless S.748 is passed in a form that is sufficiently tailored to avoid the difficulties described here, it would be our recommendation that the legislation be disapproved.

We stand ready to work with the Committee toward a consensus on this important matter. Please do not hesitate to contact the Department if we can assist in these efforts.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the President's program.

Yours truly,

John S. Herrington

cc: Honorable James A. McClure
Ranking Minority Member

MINORITY VIEWS OF SENATOR METZENBAUM

The issue which commanded most of the Committee's time and attention during consideration of the Price-Anderson reauthorization was contractor accountability.

The current Price-Anderson law holds contractors harmless for all damages, even those which result from their own gross negligence, or knowing, willful violations of regulations.

This certainly provides no incentive for safety. DOE would have us believe that oversight and regulation on its part will ensure responsible contractor performance.

The dismal record at DOE nuclear facilities does not bear out that contention. Indeed it is the lack of oversight and control by DOE which has allowed severe health and safety problems to develop and go uncorrected, and inspired strong Congressional sentiment for subjecting DOE to outside oversight and regulation. Clearly, DOE has been unable to keep its own contractors in line.

More importantly, Energy Department oversight is not a suitable substitute for strong contractor accountability provisions. Both the DOE and the contractors have a responsibility to ensure safe and efficient operation of our federal nuclear facilities, and significant improvements must be made by both parties.

The Committee considered a number of contractor accountability provisions. Although it first adopted a series of fines for violations of regulations and penalties for knowing and willful violations leading to nuclear incidents and extraordinary nuclear occurrences, it ultimately reversed its position and eliminated any accountability for accidents caused by gross negligence or even knowing and willful violations of regulations.

Instead, the Committee provided the DOE with the authority to impose fines of up to $100,000 per day for each violation of safety regulations. As noted earlier, given extensive failures by the Department to adequately monitor and control contractor activities affecting public health and safety, it is unlikely that this new authority will provide sufficient incentives for safety. Furthermore, there is little logic or financial accountability attached to such a provision. It fails to establish a system which links the size of financial responsibility to the severity of the accident and degree of culpability. While a $100,000 per day fine may be appropriate for a regulatory violation which causes no damage, if a knowing and willful violation of a regulation causes an Extraordinary Nuclear Occurrence resulting in human fatalities and substantial offsite damage, it is appropriate to levy a substantial penalty. This is why I proposed a strong subrogation provision, which would tie the level of financial responsibility for an accident caused by gross negligence or willful misconduct to the degree of damage and culpability. Such a system of accountability will make contractors more

sensitive to adherence to DOE regulations, especially at those facilities where there is a significant potential for serious accidents.

The major reason for the Committee reversal was the threat of contractors that they would no longer operate DOE facilities because they claimed that a system of fines and penalties such as that initially adopted by the Committee would expose them to financial risks greater than the benefits they receive through the fee system.

These arguments have little substance or merit.

The size of the fee has no relation to the right of citizens to expect responsible actions. Whether a contractor's fee is $1 or $10 million, citizens and communities have a right to expect contractors will not engage in gross negligence or knowingly violate regulations.

Since the original fine and penalty system adopted by the Committee applied only to the most egregious offenses—knowing and willful violations leading to nuclear accidents—it is difficult to understand how responsible contractors could object to such a provision.

Essentially, the contractors operating DOE nuclear facilities have demanded a special status which is unwarranted and inconsistent with federal policies in other areas.

None of the other federal laws which limit contractor liability are as sweeping in their protection of reckless behavior as Price-Anderson.

Most other federal laws limiting industry liability for critical activities do not offer any protection for gross negligence or willful misconduct. These include the Clean Water Act, the Swine Flu Act, the Outer Continental Shelf Lands Act Amendments of 1978, the Warsaw Convention limiting the liability of international air carriers, and the Superfund Act.

In fact, response action contractors under the Superfund Act are not even covered for damages resulting from simple negligence. Yet, there is no lack of qualified bidders for clean up contracts.

Indeed, some of the same contractors who so adamantly reject attempts to be held accountable for gross negligence or knowing violations under the Price-Anderson Act are willing to simultaneously perform other types of nuclear and ultrahazardous activities for the U.S. Department of Defense under indemnity agreements which hold them liable for damages to their own and government property resulting from their own bad faith or willful misconduct. In fact, only a few large contractors even receive this limited indemnification. Most contractors, subcontractors and suppliers have no indemnity agreements. Yet, in the debate over Price-Anderson coverage the argument was made that the small subcontractors and suppliers were most in need of full coverage.

In fact, before the passage of the Price-Anderson Act in 1957, many contractors worked at federal nuclear facilities under indemnity agreements which excluded bad faith or willful misconduct on the part of corporate directors and officials. This included many contractors still in the business today: DuPont, General Electric, Babcock and Wilcox, the University of Chicago and the University of California at Berkeley.

There is no justification for these contractors to be less accountable today than they were 30 years ago.

It is difficult to ensure adequate protection for citizens and communities near federal nuclear facilities if the contractors operating those facilities have no responsibility to conform to even a minimal level of care when managing sensitive operations.

Strong contractor accountability provisions represent sound public policy. They should be an integral part of any Price-Anderson legislation. The absence of strong accountability provisions in the committee bill was the major reason why I voted against reporting the measure. Given its importance, this issue will be discussed by the full Senate when it considers the Price-Anderson Act.

HOWARD M. METZENBAUM.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXV of the Standing Rules of the Senate, the committee notes the following changes in existing law made by the bill S. 748 as ordered reported (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law to which no change is proposed is shown in roman):

ATOMIC ENERGY ACT OF 1954

* * * * * * *

SEC. 11. DEFINITION.—The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this Act:

* * * * * * *

s. The term "person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

In the event that the Secretary of Energy, in carrying out any activity that the Secretary is authorized or directed to undertake pursuant to this Act or any other law involving the risk of public liability for a nuclear incident as a result of the storage or disposal of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste (including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility), undertakes such activity in a manner that involves the actual physical handling of spent nuclear fuel, high-level radioactive waste, or transuranic waste by the Secretary, the Secretary shall be considered as if he were a contractor with whom an indemnity agreement has been entered into pursuant to subsection 170 d. of this Act.

t. The term "person indemnified" means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in subsection 170 c., and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person, *as defined in subsection (s),* who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Commission or any project to which indemnification under the provisions of subsection 170 d., has been extended or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.

* * * * * * *

cc. The term "utilization facility" means (1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission.

dd. The term "precautionary evacuation" means an evacuation of the public, where no nuclear incident has occurred, that is ordered by an officer of a State or a political subdivision of a State who—

(1) is authorized by State law to order such an evacuation; and

(2) reasonably determines, at the time that such evacuation is ordered, that such evacuation is necessary to protect those evacuated from imminent danger of bodily injury, sickness, disease or death arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material, where such material is subject to an agreement of indemnification entered into pursuant to subsection 170 d.

ee. As used in subsections 170 d. and 170 e., the term "1988 dollars" means in any year an amount that is adjusted to reflect the effects of inflation for the period between such year and the year of the enactment of the Price-Anderson Act Amendments Act of 1987. The rate of inflation shall be measured by the percentage change in the implicit price deflator for the Gross National Product published by the United States Department of Commerce.

* * * * * * *

SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.—

* * * * * * *

[d. In addition to any other authority the Commission may have, the Commission is authorized until August 1, 1987, to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident. In such agreements of indemnification the Commission may require its contractor to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, in the amount of $500,000,000, excluding costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident: *Provided*, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000: *Provided further*, That in the case of nuclear incidents

occurring outside the United States, the amount of the indemnity provided by the Commission shall not exceed $100,000,000. The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Commission. A contractor with whom an agreement of indemnification has been executed and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this section, for injuries or damages sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.]

d. (1)(A) In addition to any other authority the Secretary of the Department of Energy (hereinafter in this section referred to as the Secretary) may have, the Secretary shall until August 1, 2017, to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a nuclear incident.

(B)(i) The authority conferred upon the Secretary pursuant to subparagraph (A) to enter into agreements of indemnification with contractors shall include contracts entered into by the Secretary for the purpose of carrying out such activities as the Secretary is authorized to undertake, pursuant to this act or any other law, involving the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste, including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility. For all such activities, the authority conferred upon the Secretary pursuant to subsection 170 d. (1)(A) shall be the exclusive means of indemnification under this section.

(ii) For the purpose of compensating public liability claims, as defined in section 11 w. of this Act, arising out of activities involving the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste produced as a result of the generation of electricity in a civilian nuclear power reactor, including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility, the Secretary shall make available such funds as may be necessary, in an amount not to exceed $6,000,000,000 in 1988 dollars, from the nuclear waste fund established pursuant to section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222).

(iii) Public liability claims arising out of activities involving the storage or disposal of all other spent nuclear fuel, high-level radioactive waste, or transuranic waste not specified in clause (ii), including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility, shall be compensated in accordance with the provisions of this Act, and from the same source of funds applicable to all other contractors indemnified pursuant to this subsection.

(iv)(I) In the event of a nuclear incident that arises out of or results from or occurs in the course of activities undertaken by the Secretary in connection with the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste, including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility, the Secretary shall determine the extent to which such incident involves materials produced as a result of the generation of electricity in a civilian nuclear power reactor, or materials resulting from other activities, or both, and based upon such determination, render a decision as to the appropriate source of funds, in accordance with clauses (ii) and (iii), to be used in compensating public liability claims.

(II) The funds to be used to compensate public liability claims pursuant to this subparagraph shall be provided in a manner and in such amounts as are appropriate to ensure that the funds necessary to compensate such claims are shared on a pro rata basis, in accordance with the determination rendered pursuant to subclause (I). The decision on the sources of such funds shall be final and conclusive. Within ninety days of the date of enactment of the Price-Anderson Act Amendments Act of 1987, the Secretary shall promulgate standards and regulations for making the determinations required under this subparagraph.

(2) In agreements of indemnification entered into pursuant to subsection 170 d. (1), the Secretary may require its contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, in an amount not to exceed $6,000,000,000 in 1988 dollars, excluding costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident: Provided, That this amount of indemnity shall be reduced by the amount of the financial protection that the Secretary requires of the contractor.

(3) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary pursuant to this subsection shall not exceed $100,000,000.

(4) The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary.

(5) A contractor with whom an aggreement of indemnification has been executed and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this section, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municiapl character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.

(6) The amounts of indemnity for public liability under this subsection, together with the amount of any financial protection required, shall apply to any and all agreements of indemnification

under which the Secretary or his predecessor may be required to indemnify any person, and all such agreements of indemnification shall be deemed to have been so modified as of the effective date of the Price-Anderson Act Amendments Act of 1987.

(7) Any public liability claims arising in connection with agreements entered into pursuant to section 170 d. (1) and resulting from a nuclear incident involving nuclear material that has been illegally diverted from its intended place of confinement or intended transportation route shall be compensated in accordance with the provisions of this subsection, in the event that:

(A) the Secretary has title to such nuclear material; or

(B) title to such material cannot be identified.

[e.**]** *e. (1)* The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed (1) the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor of (2) if the amount of financial protection required of the licensee exceeds $60,000,000, such aggregate liability shall not exceed the sum of $560,000,000 or the amount of financial protection required of the licensee, whichever amount is greater. *Provided,* That in the event of a nuclear incident involving damages in excess of that amount of aggregate liability, the Congress will thoroughly review the particular incident and will take whatever action is deemed necessary and appropriate to protect the public from the consequences of a disaster of such magnitude: *And provided further,* That with respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection 170 d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor.

e. (2)(A) With respect to nuclear incidents involving contractors with whom the Secretary has entered into an agreement of indemnification, pursuant to subsection 170 d., the aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed $6,000,000,000 in 1988 dollars.

(B) In the event of a nuclear incident involving damages in excess of the amount of aggregate liability, the Congress will thoroughly review the particular incident, in accordance with the procedures set forth in subsection 170 i., and will, in accordance with such procedures, take whatever action is necessary, including approval of appropriate compensation plans, to compensate the public in full for all public liability claims resulting from a disaster of such magnitude.

(3) With respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection 170 d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor.

f. The **[**Commission**]** *Commission or the Secretary, as appropriate,* is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee

shall be $30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 103: *Provided*, That the [Commission] *Commission or the Secretary, as appropriate*, is authorized to reduce the fee for such facilities in reasonable relation to increases in financial protection required above a level of $60,000,000. For facilities licensed under section 104, and for construction permits under section 185, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 104, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than $100 per year.

g. In administering the provisions of this section, the Commission *or the Secretary, as appropriate*, shall use, to the maximum extent practicable, the facilities and services of private insurance organizations, and the Commission *or the Secretary, as appropriate*, may contract to pay a reasonable compensation for such services. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon a showing by the Commission *or the Secretary, as appropriate*, that advertising is not reasonably practicable and advance payments may be made.

H. The agreement of indemnification may contain such terms as the Commission *or the Secretary, as appropriate*, deems appropriate to carry out the purposes of this section. Such agreement shall provide that, when the Commission *or the Secretary, as appropriate*, makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission *or the Secretary, as appropriate*, shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification, appear through the Attorney General on behalf of the person indemnified, take charge of such action, and settle or defend any such action. The Commission *or the Secretary, as appropriate*, shall have final authority on behalf of the United States to settle or approve the settlement of any such claim on a fair and reasonable basis with due regard for the purposes of this Act. Such settlement shall not include expenses in connection with the claim incurred by the person indemnified.

[i.] *i. (1)* After any nuclear incident which will probably require payments by the United States under this section or which will probably result in public liability claims in excess of $560,000,000, the Commission shall make a survey of the causes and extent of damage which shall forthwith be reported to the Joint Committee, to the Congressmen of the affected districts, and to the Senators of the affected States, and, except for information which would cause serious damage to the national defense of the United States, all final findings shall be made available to the public, to the parties involved and to the courts. The Commission shall report to the Joint Committee by April 1, 1958, and every year thereafter on the operations under this section.

i. (2) After any nuclear incident covered by an indemnity agreement under subsection 170 d. which will probably require payments by the United States under this section, the Secretary shall make a survey of the causes and extent of damage, and shall submit such report forthwith to the Congress, to the Congressmen of the affected districts, to the Senators of the affected States, and, except for information which would cause serious damage to the national defense of the United States, to the public, to the parties involved, and to the courts. The Secretary shall report annually to the Congress on the operations under this section.

(3) Upon a determination by a court, pursuant to subsection 170 o., that public liability from a single nuclear incident covered by an indemnity agreement under subsection 170 d. may exceed the aggregate liability under subsection 170 e., the President of the United States shall, within ninety days after such determination, submit to the Congress—

(A) a report setting forth the causes and extent of damage and the estimated requirements for full, equitable, and efficient compensation and relief of all claimants;

(B) one or more compensation plans, containing a recommendation or recommendations as to the relief to be provided; and

(C) any additional legislative authorities necessary to implement such compensation plan or plans.

(4) Any compensation plan transmitted to the Congress pursuant to paragraph (3) shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

(5) No such compensation plan may be considered approved for purposes of subsection 170 e. (2) unless between the date of transmittal and the end of the first period of sixty calendar days of continuous session of Congress after the date on which such action is transmitted to such House, each House of Congress passes a resolution described in paragraph 7 of this subsection.

(6) For the purpose of paragraph 5 of this subsection—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day calendar period.

(7)(A) This paragraph is enacted by Congress—

(i) As an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by clause (B) and it supersedes other rules only to the extent that it is inconsistent therewith; and

(ii) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(B) For purposes of this paragraph, the term 'resolution' means only a resolution of either House of Congress the matter after the resolving clause of which is as follows: "That the ap-

proves the compensation plan numbered submitted to the Congress on , 19 .". the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specified more than one compensation plan.

(C) A resolution once introduced with respect to a compensation plan shall immediately be referred to a committee (and all resolutions with respect to the same compensation plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(D)(i) If the committee to which a resolution with respect to a compensation plan has been referred has not reported it at the end of twenty calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration with respect to such compensation plan which has been referred to the committee.

(ii) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same compensation plan), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(iii) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same compensation plan.

(E)(i) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(ii) Debate on the resolution referred to in clause (i) of this subparagraph shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(F)(i) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution or motions to proceed to the consideration of other business, shall be decided without debate.

(ii) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedures relating to a resolution shall be decided without debate.".

j. In administering the provisions of this section, the Commission *or the Secretary, as appropriate,* may make contracts in advance of appropriations and incur obligations without regard to section 3679 of the Revised Statutes, as amended.

* * * * * * *

m. The Commission *or the Secretary, as appropriate,* is authorized to enter into agreements with other indemnitors to establish coordinated procedures for the prompt handling, investigation, and settlement of claims for public liability. The Commission *or the Secretary, as appropriate,* and other indemnitors may make payments to, or for the aid of, claimants for the purpose of providing immediate assistance following a nuclear incident. Any funds appropriated to the Commission *or the Secretary, as appropriate,* shall be available for such payments. Such payments may be made without securing releases, shall not constitute an admission of the liability of any person indemnified or of any indemnitor, and shall operate as a satisfaction to the extent thereof of any final settlement or judgment.

n. (1) With respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection or an indemnity agreement applies and which—

(a) arises out of or results from or occurs in the course of construction, possession, or operation of a production or utilization facility, or

(b) arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from a production or utilization facility, or

(c) during the course of the contract activity arises out of or results from the possession, operation, or use by [a Commission] *a Department of Energy* contractor or subcontractor of a device utilizing special nuclear material or byproduct material, *or*

(d) arises out of or results from or occurs in the course of activities undertaken by the Secretary, including activities undertaken by contract, in connection with the storage or disposal of high-level radioactive waste, spent nuclear fuel, or transuranic waste, including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility, the Commission *or the Secretary, as appropriate,* may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive (i) any issue or defense as to conduct of the claimant or fault of persons indemnified, (ii) any issue or defense as to charitable or governmental immunity, and (iii) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof[, but in no event more than twenty years after the date of the nuclear incident]. The waiver of any such issue or defense shall be effective regardless of

whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. When so incorporated, such waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified. Such waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages, nor shall such waivers apply to injury or damge to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant. The waivers authorized in this subsection shall, as to indemnitors, be effective only with respect to those obligations set forth in the insurance policies or the contracts furnished as proof of financial protection and in the indemnity agreements. Such waivers shall not apply to, or prejudice the prosecution or defense of, any claim or portion of a claim which is not within the protection afforded under (i) the terms of insurance policies or contracts furnished as proof of financial protection, or indemnity agreements, and (ii) the limit of liability provisions of subsection 170 e.

(2) With respect to any public liability action arising out of or resulting from an extraordinary nuclear occurrence, the United States district court in the district where the extraordinary nuclear occurrence takes place, or in the case of an extraordinary nuclear occurrence taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the Commission *or the Secretary, as appropriate,* any such action pending in any State court or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States.

o. Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines upon the petition of any indemnitor or interested person that public liability from a single nuclear incident may exceed the limit of liability under subsection 170 e.:

(1) Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 15 per centum of such limit of liability without the prior approval of such court;

(2) The court shall not authorize payments in excess of 15 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to subparagraph (3) of this subsection (o); and

(3) The Commission *or the Secretary as appropriate* shall, and any other indemnitor or other interested person may, submit to such district court a plan for the disposition of pending claims and for the distribution of remaining funds available.

Such a plan shall include an allocation of appropriate amounts for personal injury claims, property damage claims, and possible latent injury claims which may not be discovered until a later time. Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission *or the Secretary as appropriate*, any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders, staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds.

(4) The Commission shall, within ninety days after a court shall have made such determination, deliver to the Joint Committee [1] a supplement to the report prepared in accordance with subsection 170 i. of this Act setting forth the estimated requirements for full compensation and relief of all claimants, and recommendations as to the relief to be provided.

p. The Commission shall submit to the Congress by August 1, 1983, *and the Secretary shall submit to the Congress by August 1, 1997, and every ten years thereafter*, a detailed report concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.

q. (1)(A) No court may award exemplary or punitive damages under State law in any action with respect to a nuclear incident against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident.

(B) Subparagraph (A) applies to any nuclear incident or evacuation covered by an agreement of indemnification under subsection 170 d.

(2) Nothing in this subsection affects the authority of any court to award exemplary or punitive damages under State law in any instance other than an instance subject to paragraph (1).

r. The Secretary of Energy shall reimburse a State or local government for costs of precautionary evacuations associated with activities covered by an agreement of indemnification under subsection 170 d. where such evacuations are ordered by a State or local official, provided that such evacuation is deemed reasonable, given due consideration to information available to the State or local officials at the time of the decision to evacuate, in any one of the following manners:

(1) prior to the evacuation, by the Secretary of Energy or his designee agreeing with the decision;

(2) subsequent to the evacuation, by the Secretary of Energy or his designee agreeing with the evacuation decision no later than sixty days after issuance of the evacuation order; or

(3) if subsequent to the evacuation, and in the event that the Secretary does not agree within sixty days after issuance of the evacuation order, by agreement with the evacuation decision by a panel consisting of three members, one appointed by the Nuclear Regulatory Commission, one appointed by the Director of the Federal Emergency Management Agency, and one appointed by the Governor of the State in which the precautionary evacuation took place. The Panel shall have sixty days to make its decision.

* * * * * * *

SEC. 223. VIOLATION OF SECTIONS GENERALLY.—a. Whoever willfully violates, attempts to violate, or conspires to violate, any provision of this Act for which no criminal penalty is specifically provided or of any regulation or order prescribed or issued under section 65 or subsections 161 b., i., or o. shall, upon conviction thereof, be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than $20,000 or by imprisonment for not more than twenty years, or both.

b. Any individual director, officer, or employee of a firm constructing, or supplying the components of any utilization facility required to be licensed under section 103 or 104 b. of this Act who by act or omission, in connection with such construction or supply, knowingly and willfully violates or causes to be violated, any section of this Act, any rule, regulation, or order issued thereunder, or any license condition, which violation results, or if undetected could have resulted, in a significant impairment of a basic component of such a facility shall, upon conviction, be subject to a fine of not more than $25,000 for each day of violation, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after a first conviction under this subsection, punishment shall be a fine of not more than $50,000 per day of violation, or imprisonment for not more than two years, or both. For the purposes of this subsection, the term "basic component" means a facility structure, system, component or part thereof necessary to assure—

(1) the integrity of the reactor coolant pressure boundary,

(2) the capability to shut-down the facility and maintain it in a safe shut-down condition, or

(3) the capability to prevent or mitigate the consequences of accidents which could result in an unplanned offsite release of quantities of fission products in excess of the limits established by the Commission.

The provisions of this subsection shall be prominently posted at each site where a utilization facility required to be licensed under section 103 or 104 b. of this Act is under construction and on the

premises of each plant where components for such a facility are fabricated.

c. Any individual director, officer or employee of a person indemnified under an agreement of indemnification under section 170 d. (or of a subcontractor or supplier thereto) who, by act or omission, knowingly and willfully violates or causes to be violated any section of this Act or any nuclear safety-related rule, regulation or order issued thereunder by the Secretary of Energy (or expressly incorporated by reference by the Secretary for purposes of nuclear safety), which violation results in or, if undetected, would have resulted in a nuclear incident as defned in subsection 11 q. shall, upon conviction, be subject to fine of not more than $25,000, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after the first conviction under this subsection, punishment shall be a fine of not more than $50,000, or imprisonment for not more than five years, or both.

* * * * * * *

SEC. 234. CIVIL MONETARY PENALTIES FOR VIOLATIONS OF LICENSING REQUIREMENTS.—

a. Any person who (1) violates any licensing provision of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or (2) commits any violation for which a license may be revoked under section 186, shall be subject to a civil penalty, to be imposed by the Commission, of not to exceed $100,000 for each such violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The Commission shall have the power to compromise, mitigate, or remit such penalties.

b. Whenever the Commission has reason to believe that a person has become subject to the imposition of a civil penalty under the provisions of this section, it shall notify such person in writing (1) setting forth the date, facts, and nature of each act or omission with which the person is charged, (2) specifically identifying the particular provision or provisions of the section, rule, regulation, order, or license involved in the violation, and (3) advising of each penalty which the Commission proposes to impose and its amount. Such written notice shall be sent by registered or certified mail by the Commission to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the Commission shall by regulation prescribe, why such penalty should not be imposed. The notice shall also advise such person that upon failure to pay the civil penalty subsequently determined by the Commission, if any, the penalty may be collected by civil action.

c. On the request of the Commission, the Attorney General is authorized to institute a civil action to collect a penalty imposed pursuant to this section. The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to him for collection.

SEC. 234A. CIVIL MONETARY PENALTIES FOR VIOLATIONS OF DEPARTMENT OF ENERGY REGULATIONS.—a. Any person who has en-

tered into an agreement of indemnification under subsection 107 d. (or any subcontractor or supplier thereto) who violates (or whose employee violates) any rule, regulation or order related to nuclear safety prescribed or issued by the Secretary of Energy pursuant to this Act (or expressly incorporated by reference by the Secretary for purposes of nuclear safety) shall be subject to appropriate enforcement action or a civil penalty of not to exceed $100,000 for each such violation. If any violation under this subsection is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

b. (1) The Secretary shall have the power to compromise, modify or remit, with or without conditions, such civil penalties and to prescribe regulations as he may deem necessary to implement this section.

(2) In determining the amount of any civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

c. (1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within thirty calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within sixty calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review

de novo the law and facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

d. The provisions of this section shall not apply to:

(1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;

(2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;

(3) AT&T Technologies, Inc. (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratory;

(4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;

(5) Princeton University (and any subcontractors or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;

(6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and

(7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.

* * * * * * *

DEPARTMENT OF ENERGY ORGANIZATION ACT

* * * * * * *

OFFICE OF INSPECTOR GENERAL

SEC. 208. (a)(1) There shall be within the Department an Office of Inspector General to be headed by an Inspector General, who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Inspector General shall report to, and be under the general supervision of, the Secretary or, to the extent such authority is delegated, the Deputy Secretary, but shall not be under the control of, or subject to supervision by, any other officer of the Department.

(2) There shall also be in the Office a Deputy Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Deputy shall assist the Inspector General in the administration of the Office and shall, during the absence or temporary incapacity of the Inspector General, or during a vacancy in that Office, act as Inspector General.

(3) The Inspector General or the Deputy may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(4) The Inspector General shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Audits and an Assistant Inspector General for Investigations.

(5) The Inspector General shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, and the Deputy Inspector General shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b) It shall be the duty and responsibility of the Inspector General—

(1) to supervise, coordinate, and provide policy direction for auditing and investigative activities relating to the promotion of economy and efficiency in the administration of, or the prevention or detection of fraud or abuse in, programs and operations of the Department;

(2) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Department for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate relationships between the Department and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Department, and (B) the identification and prosecution of participants in such fraud or abuse;

(4) to keep the Secretary and the Congress fully and currently informed, by means of the reports required by subsection (c) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Department, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action; and

(5) to seek to coordinate his actions with the actions of the Comptroller General of the United States with a view to avoiding duplication.

(c)(1) The Inspector General shall, not later than May 31 and November 30 of each year, submit to the Secretary and the Congress

semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to—

(A) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the Department disclosed by such activities during the reporting period;

(B) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified pursuant to subparagraph (A);

(C) an identification of each significant recommendation described in previous reports under this subsection on which corrective action has not been completed;

(D) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted; and

(E) information concerning the numbers and types of aduit reports completed by the Office during the reporting period.

(2) Within sixty days of the transmission of each semiannual report to the Congress, the Secretary shall make copies of such report available to the public upon request and at a reasonable cost.

(d) The Inspector General shall report immediately to the Secretary, to the Federal Energy Regulatory Commission as appropriate, and, within seven days thereafter, to the appropriate committees or subcommittees of the Congress whenever the Office becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of the Department. The Deputy and Assistant Inspectors General shall have particular responsibility for informing the Inspector General of such problems, abuses, or deficiencies.

(e) The Inspector General (1) may make such additional investigations and reports relating to the administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary or desirable, and (2) shall provide such additional information or documents as may be requested by either House of Congress or, with respect to matters within the jurisdiction, by any committee or subcommittee thereof.

(f) Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted to the Secretary, to the Federal Energy Regulatory Commission, if applicable, and to the Congress, or committees or subcommittees thereof, by the Inspector General without further clearance or approval. The Inspector General shall insofar as feasible, provide copies of the reports required under subsection (c) to the Secretary and the Commission, if applicable, sufficiently in advance of the due date for the submission to Congress to provide a reasonable opportunity for comments of the Secretary and the Commission to be appended to the reports when submitted to Congress.

(g) In addition to the authority otherwise provided by this section, the Inspector General, in carrying out the provisions of this section, is authorized—

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, and other material available to the Department which relate to programs and operations with respect to which the Inspector General has responsibilities under this section;

(2) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this section, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court; and

(3) to have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions under this section.

(h) In carrying out the responsibilities specified in subsection (b)(1), the Inspector General shall—

(1) comply with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions;

(2) establish guidelines for determining the approrpriate use of non-Federal auditors; and

(3) take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General as described in paragraph (1).

(i) In carrying out his duties and responsibilities under this section, the Inspector General shall give particular regard to the activities of the Comptroller General with a view toward avoiding duplication and insuring effective coordination and cooperation.

(j) In carrying out his duties and responsibilities under this section, the Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

OFFICE OF INSPECTOR GENERAL FOR NUCLEAR PROGRAMS

"SEC. 208A(A)(1) There shall be established within the Department an Office of Inspector General for Nuclear Programs to be headed by an Inspector General for Nuclear Programs, who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability in management of duties assigned to the Inspector General for Nuclear Programs in this section and without regard to political affiliation. The Inspector General for Nuclear Programs shall report to, and be under the general supervision of, the Secretary or, to the extent such authority is delegated, the Deputy Secretary, but shall not be under the control of, or subject to supervision by, any other officer of the Department.

(2) There shall also be in the Office a Deputy Inspector General for Nuclear Programs who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability in management of duties as-

signed to the Inspector General for Nuclear Programs in this section and without regard to political affiliation. The Deputy shall assist the Inspector General for Nuclear Programs, in the administration of the Office and shall during the absence or temporary incapacity of the Inspector General for Nuclear Programs, or during a vacancy in that Office, act as Inspector General for Nuclear Programs.

(3) The Inspector General for Nuclear Programs or the Deputy may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(4) The Inspector General for Nuclear Program shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Audits and an Assistant Inspector General for Investigations.

(5) The Inspector General for Nuclear Programs shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, and the Deputy Inspector General for Nuclear Programs shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b) It shall be the duty and responsibility of the Inspector General for Nuclear Programs—

(1) to supervise, coordinate and provide policy direction for auditing and investigative activities relating to the promotion of health, safety and sound environmental management in the administration of the nuclear programs and operations of the Department;

(2) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Department for the purpose of promoting health, safety and sound environmental management in the administration of its nuclear programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate, relationships between the Department and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters related to the promotion of health, safety and sound environmental management in nuclear programs and operations administered or financed by the Department, and (B) the identification and prosecution of violations of nuclear safety-related rules, regulations, or orders prescribed or issued by the Secretary (or expressly incorporated by reference by the Secretary for purposes of nuclear safety); and

(4) to keep the Secretary and Congress fully and currently informed, by means of the reports required by subsection (c) and otherwise, concerning serious problems or deficiencies relating to health, safety or environmental management in the administration of nuclear programs and operations administered or financed by the Department, to recommend corrective action concerning such problems and deficiencies, and to report on the progress made in implementing such corrective action.

(c)(1) The Inspector General for Nuclear Programs, shall, not later than May 31 and November 30 of each year, submit to the Secretary and the Congress semiannual reports summarizing the activities of

the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to—

(A) a description of significant problems and deficiencies relating to the administration of programs and operations of the Department disclosed by such activities during the reporting period;

(B) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems or deficiencies identified pursuant to subparagraph (A);

(C) an identification of each significant recommendation described in previous reports under this subsection on which corrective action has not been completed;

(D) a summary of violations of nuclear safety-related rules, regulations or orders prescribed or issued by the Secretary (or expressly incorporated by reference by the Secretary or purposes of nuclear safety) identified and brought to the attention of proper authorities and the disposition of these matters at the time of the report; and

(E) information concerning the numbers and types of audit reports completed by the Office during the reporting period.

(2) Within sixty days of the transmission of each semiannual report to the Congress. the Secretary shall make copies of such report available to the public upon request and at a reasonable cost.

(d) The Inspector General for Nuclear Programs shall report immediately to the Secretary and to appropriate committees and subcommittees of Congress whenever the Office becomes aware of particularly serious flagrant problems or deficiencies relating to health, safety and sound environmental management in the administration of nuclear programs and operations of the Department. The Deputy and Assistant Inspectors General for Nuclear Programs shall have particular responsibility for informing the Inspector General for Nuclear Programs of such problems or deficiencies.

(e) The Inspector General for Nuclear Programs—

(1) may make such additional investigations and reports relating to the administration of the nuclear programs and operations of the Department as are, in the judgment of the Inspector General for Nuclear Programs, necessary or desirable;

(2) shall respond in a timely fashion to any request from either House of Congress or from a committee thereof for an investigation relating to health, safety or environmental problems with the administration of nuclear programs or operations of the Department by carrying out the investigation requested and submitting a report to the Secretary and to Congress thereon or by stating in writing the reasons why the Inspector General for Nuclear Programs does not believe the investigation requested is justified; and

(3) shall provide such additional information or documents as may be requested by either House of Congress or, with respect to matters within the jurisdiction, by an committee or subcommittee thereof.

(f) Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be

transmitted to the Secretary and to Congress, or committees or subcommittees thereof, by the Inspector General for Nuclear Programs without further clearance or approval. The Inspector General for Nuclear Programs shall insofar as feasible, provide copies of the reports required under subsection (c) to the Secretary sufficiently in advance of the due date for the submission to Congress to provide a reasonable opportunity for comments of the Secretary to be appended to the reports when submitted to Congress.

(g) In addition to the authority otherwise provided by this section, the Inspector General for Nuclear Programs, in carrying out the provisions of this section, is authorized—

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, and other material available to the Department which relate to programs and operations with respect to which the Inspector General for Nuclear Programs has responsibilities under this section;

(2) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this section, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court; and

(3) to have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions under this section.

(h) In carrying out the responsibilities specified in subsection (b)(1), the Inspector General for Nuclear Programs may obtain services, including services of experts and consultants, as authorized by section 3109 of title 5, United States Code, at rates not to exceed the daily rate prescribed for grade GS–18 of the General Schedule under section 5332 of title 5, United States Code, for persons of Government service employed intermittenly.

(i) In carrying out his duties and responsibilities under this section, the Inspector General for Nuclear Programs shall—

(1) give particular regard to the activities of the Inspector General under section 208 with a view toward avoiding duplication and insuring effective coordination and cooperation; and

(2) report expeditiously to the Attorney General whenever the Inspector General for Nuclear Programs has reasonable grounds to believe there has been a violation of Federal criminal law.

(j)(1) The Office of the Inspector General for Nuclear Programs may receive and investigate complaints or information from an employee of the Department (or an employee of any person under contract with the Department) concerning the possible existence of an activity constituting a violation of nuclear safety-related rules, regulations or orders prescribed or issued by the Secretary (or expressly incorporated by reference by the Secretary for purposes of nuclear safety).

(2) The Inspector General for Nuclear Programs shall not, after receipt of a complaint or information from such an employee, disclose the identity of the employee, unless the Inspector General for Nuclear Programs determines such disclosure is unavoidable during the course of the investigation.

(3) Any employee of the Department (or an employee of any person under contract with the Department) who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to the Office of the Inspector General for Nuclear Programs, unless the complaint was made or the information disclosed with the knowledge that is was false or with willful disregard for its truth or falsity.

(k) Any request for appropriations for the Department submitted to Congress shall indentify in a detailed budget justification the portion of such request intended for support of the Office of the Inspector General for Nuclear Programs, and shall include the comments of the Inspector General for Nuclear Programs on the differences, if any, between the amounts requested and the assessment of the Inspector General for Nuclear Programs of the budgetary needs of the Office."

○